

**ORIGINS OF THE CENTRALISED UNITARY STATE WITH SPECIAL
REFERENCE TO BOTSWANA, ZIMBABWE AND NAMIBIA**

by

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CONTENTS	PAGE
PREFACE	vii
GENERAL NOTE	xi
SUMMARY	xii
Chapter 1	
INTRODUCTION	1
1.1 THE ORGANISATION OF THE STATE	1
1.2 PURPOSE AND SCOPE OF THE THESIS	3
1.3 THE UNITARY STATE IN AFRICA	6
1.4 LITERATURE ON THE UNITARY STATE	10
1.5 A THEORETICAL MODEL	13
1.6 METHODOLOGICAL CONSIDERATIONS	16
1.6.1 The origins of constitutions	16
1.6.2 The written document and practice	18
1.6.3 The descriptive and explanatory method	20
1.7 APPROACHES	21
1.7.1 The historical approach	21
1.7.2 The elite approach	22
1.7.3 The ideological approach	22
1.7.4 The functional approach	23
1.8 RESEARCH TECHNIQUES	23
1.9 FURTHER RESEARCH DIRECTIONS	24
1.10 ORGANISATION OF THE THESIS	25
1.11 SOURCES CONSULTED	27
Chapter 2	
DEFINITIONS	
2.1 INTRODUCTION	31
2.2 UNITARY, UNITARIAN, UNITARIST, UNITARIANISM, UNITARISM, UNIFIED AND UNIFICATION	31
2.2.1 Unitary	31
2.2.2 Unitarian	33
2.2.3 Unitarist	33
2.2.4 Unitarianism	34
2.2.5 Unitarism	34
2.2.6 Unified and unification	34
2.3 FEDERATION AND FEDERALISM	35
2.4 THE UNITARY STATE	38
2.4.1 Supremacy of the central authority	38
2.4.2 Subsidiary sovereign bodies	39
2.5 CENTRALISATION, DECENTRALISATION, DECONCENTRATION AND THE UNITARY STATE	41
2.5.1 Centralisation and the unitary state	46
2.6 QUANTIFICATION AND MEASUREMENT OF CENTRALISATION	47
2.6.1 Assumptions	48
2.6.2 Explanation and application of fiscal measures	49
2.7 EVALUATION AND CONCLUSION	51
2.8 SOURCES CONSULTED	52

Chapter 3

THE THEORY AND HISTORICAL EVOLUTION OF THE CENTRALISED UNITARY STATE

3.1. INTRODUCTION	55
3.2. THEORY AND THE CENTRALISED UNITARY STATE	55
3.2.1 Theory defined as thoughts, conjectures and ideas	56
3.2.2 Theory defined as the consummation of explanation	56
3.2.3 Theory defined as a conceptual scheme	56
3.3. THEORIES DEALING WITH THOUGHTS, CONJECTURES AND IDEAS	57
3.3.1 Monism, pluralism and dualism	57
3.4. MONIST AND PLURALIST PHILOSOPHERS	62
3.4.1 Aristotle	62
3.4.2 Machiavelli	63
3.4.3 Jean Bodin	64
3.4.4 Hobbes	66
3.4.5 Rousseau	67
3.4.6 Marx	68
3.4.7 J.N. Figgis	69
3.4.8 Observations on the above theorists	70
3.5. SOVEREIGNTY, NATIONALISM AND THE HISTORICAL EVOLUTION OF THE STATE	71
3.5.1 Historical Europe	73
3.5.2 Sovereignty	75
3.5.3 The Divine Right of Kings	75
3.5.4 The absolutist state	76
3.5.5 Nationalism	79
3.6. THEORY DEFINED AS THE CONSUMMATION OF EXPLANATION	80
3.6.1 Shils	80
3.6.2 Concluding remarks	84
3.7. THEORY DEFINED AS A CONCEPTUAL SCHEME	85
3.7.1 <i>The pre-centralised stage</i>	88
3.7.2 <i>The centralisation stage</i>	88
3.7.3 <i>The take-off stage</i>	89
3.7.4 <i>The termination stage</i>	90
3.7.5 A critique of Etzioni's conceptual scheme	90
3.8. CONCLUSION	91
3.9. SOURCES CONSULTED	92

Chapter 4

SURVEY OF THE LITERATURE ON THE ORIGINS OF THE CENTRALISED UNITARY STATE IN AFRICA

4.1. INTRODUCTION	94
4.2. ORIGINS OF WRITTEN CONSTITUTIONS	94
4.2.1 Theoretical perspectives	95
4.3. LITERATURE	97
4.3.1 Literature categories	97
4.3.2 Published sources	97
4.4. EARLY IMPERIAL CONSTITUTIONAL TEXTS	98
4.4.1 The Durham Report	98
4.4.2 The impact and significance of the Report	103
4.4.3 The drafting of British colonial constitutions	105
4.4.4 Early constitutional texts on Africa	107
4.5. TEXTS WRITTEN FROM THE 1960s	112
4.6. NATIONALISM	130

4.7	AFRICAN SOCIALIST AND MARXIST-LENINIST IDEOLOGY	132
4.8	AFRICAN UNITY AND PAN-AFRICANISM	134
4.8.1	African leaders	134
4.8.2	Azikiwe	134
4.8.3	Nkrumah	135
4.8.4	Nkrumah and the Congo crisis	137
4.8.5	Nyerere	138
4.8.6	Kaunda	140
4.8.7	A counter argument to unitarism	141
4.9	PAN-AFRICANIST RESOLUTIONS	142
4.10	SUMMARY AND CONCLUSION	144
4.11	SOURCES CONSULTED	147

Chapter 5

BOTSWANA (BECHUANALAND PROTECTORATE)

5.1	INTRODUCTION	151
5.2	NOMENCLATURE	152
5.3	SCOPE, SOURCES, CIRCUMSTANTIAL FACTORS, ASSUMPTIONS AND HYPOTHESES	153
5.3.1	Scope	153
5.3.2	Sources	153
5.3.3	Circumstantial factors	153
5.3.4	Assumptions	154
5.3.5	Hypotheses	155
5.4	THEORETICAL SCHEME	156
5.5	FOUNDATIONS OF THE BECHUANALAND PROTECTORATE 1885-1920 - <i>THE PRE-CENTRALISED STAGE</i>	157
5.5.1	The historical foundations of the centralised state	157
5.6	THE PERIOD 1921-1950 - <i>THE CENTRALISATION STAGE</i>	162
5.6.1	Administrative reforms	162
5.6.2	African nationalism as a centralising force	164
5.6.3	The Advisory Councils	167
5.6.4	African Advisory Council	168
5.6.5	European Advisory Council	171
5.7	THE ESTABLISHMENT OF A LEGISLATIVE COUNCIL 1950-1961 - <i>THE TAKE-OFF STAGE</i>	172
5.7.1	The nationalist movement	172
5.7.2	European Advisory Council	174
5.7.3	African Advisory Council	175
5.7.4	The formation of the Joint Advisory Council	176
5.7.5	The Joint Advisory Council Constitutional Committee Report	180
5.8	THE INDEPENDENCE PHASE 1961-1966 - <i>THE TERMINATION STAGE</i>	183
5.8.1	The 1961 Constitution	183
5.8.2	Opposition to the Independence Constitution	187
5.9	SUMMARY AND CONCLUSION	188
6.10	SOURCES CONSULTED	191

Chapter 6

ZIMBABWE(RHODESIA)

6.1	INTRODUCTION	195
6.2	NOMENCLATURE	194
6.3	SCOPE, SOURCES, CIRCUMSTANTIAL FACTORS, AND HYPOTHESES	195
6.3.1	Scope	195
6.3.2	Sources	196
6.3.3	Circumstantial factors	196
6.3.4	Hypotheses	198
6.4	THEORETICAL SCHEME	199
6.5	SOUTHERN RHODESIA 1889-1898 - <i>THE PRE-CENTRALISED STAGE</i>	200
6.5.1	Historical and cultural factors	200
6.5.2	The administration of the territory	202
6.5.3	African administration	207
6.6	THE EVOLUTION OF RESPONSIBLE GOVERNMENT 1899-1923 - <i>THE CENTRALISATION STAGE</i>	210
6.6.1	Internal administration and the climate of opinion	210
6.6.2	Southern Rhodesia and its neighbours	213
6.6.3	Local perspectives on the role of government	215
6.6.4	Responsible government	218
6.6.5	The Legislative council debate on the First Report	223
6.6.6	The delegation to the colonial Secretary	224
6.6.7	The British government's perspective	227
6.6.8	The nature of the 1923 Constitution	232
6.7	THE PERIOD 1924-1979 - <i>THE TAKE-OFF STAGE</i>	233
6.7.1	Rhodesia and its neighbours	233
6.7.2	The issue of control	244
6.7.3	Unitarist sentiment during the federal era	245
6.7.4	An assessment of Rhodesia's constitutional development	247
6.8	CONSTITUTIONAL INITIATIVES 1965-1979	248
6.8.1	Report of the constitutional Commission 1968 (The Whaley Commission)	249
6.9	THE INCREASING SCOPE OF THE SOUTHERN RHODESIAN GOVERNMENT	255
6.10	THE CONSTITUTION OF ZIMBABWE (LANCASTER HOUSE CONSTITUTION) - <i>THE TERMINATION STAGE</i>	261
6.10.1	Lancaster House - the run-up to the formal proceedings	261
6.11	CONCLUSION	266
6.12	SOURCES CONSULTED	268

Chapter 7

NAMIBIA(SOUTH WEST AFRICA)

7.1	INTRODUCTION	275
7.2	NOMENCLATURE	276
7.3	ASSUMPTIONS	277
7.4	PURPOSE, SCOPE, SOURCES, CIRCUMSTANTIAL FACTORS, AND HYPOTHESES	278
7.4.1	Purpose and scope	278
7.4.2	Sources	278

7.4.3	Circumstantial factors	278
7.4.4	Hypotheses	280
7.5	THEORETICAL SCHEME	281
7.6	SOUTH WEST AFRICA 1884-1894 - THE PRE-CENTRALISED STAGE	282
7.7	THE FOUNDATIONS OF THE CENTRALISED UNITARY STATE 1895-1946 - THE CENTRALISATION STAGE	285
7.7.1	South African rule in the territory	287
7.7.2	'Native Administration'	289
7.8	INCREASING INVOLVEMENT BY THE INTERNATIONAL COMMUNITY 1946-1965 - THE TAKE-OFF STAGE	291
7.8.1	The international dimension	291
7.8.2	Incorporation of the territory into the Union	295
7.9	THE BUILD UP TO THE 1990 INDEPENDENCE CONSTITUTION 1967-1990 - THE TERMINATION STAGE	300
7.9.1	Renewed attempts by the United Nations and the international community to resolve the dispute	301
7.9.2	The United Nations	301
7.9.3	United Nations Representatives	302
7.10	INTERNAL DEVELOPMENTS	306
7.10.1	Advisory Council	306
7.10.2	The Turnhalle Conference	306
7.11	FURTHER INITIATIVES BY THE INTERNATIONAL COMMUNITY	309
7.11.1	The Western Contact Group	311
7.11.2	The United Nations Council for Namibia	314
7.11.3	United Nations Special Committee on Decolonization	315
7.11.4	The 1982 Constitutional Principles	316
7.11.5	United Nations Institute for Namibia	316
7.12	NAMIBIA/SOUTH WEST AFRICA/POLITICAL PARTIES AND MOVEMENTS	318
7.12.1	African nationalism	318
7.12.2	South West African People's Organisation (SWAPO)	320
7.12.3	The Democratic Turnhalle Alliance (DTA)	325
7.12.4	Namibian National Front (NNF)	326
7.12.5	South West African National Union (SWANU)	328
7.12.6	Swapo-Democrats (Swapo-D)	330
7.12.7	Action Front for the Retention of the Turnhalle Principles (AKTUR)	330
7.13	NEW INTERNAL INITIATIVES	332
7.13.1	The South African Government	332
7.13.2	Multi-Party Conference of South West Africa/Namibia	332
7.13.3	Constitutional Council	333
7.14	DRAFTING OF NAMIBIA'S INDEPENDENCE CONSTITUTION	334
7.14.1	THE CONSTITUTION DRAFTING PROCESS	335
7.15	SUMMARY AND CONCLUSION	339
7.16	SOURCES CONSULTED	345

Chapter 8

CONCLUSION	350
8.1 AN EVALUATION OF THE ORIGINS OF THE CENTRALISED UNITARY STATE	350
8.1.1 The theoretical and historical dimension of unitarism	350
8.1.2 The general African experience	354
8.2 BOTSWANA, ZIMBABWE AND NAMIBIA COMPARED	356

8.3.	SOME PROPOSITIONS	366
8.4	POSTSCRIPT	369
8.4.1	CONSTITUTIONAL REASSESSMENT IN BOTSWANA, ZIMBABWE AND NAMIBIA	369
8.4.1.1	Botswana	370
8.4.1.2	Zimbabwe	371
8.4.1.3	Namibia	372
8.5	THE REASSESSMENT PROCESS IN AFRICA	374
8.5.1	Some references to the literature	376
8.6	CONCLUSION	379
8.6.1	The prospects for constitutional reform in Africa	379
8.7	SOURCES CONSULTED	384
BIBLIOGRAPHY		387

PREFACE

My interest in the unitary state was initiated by the debate which took place in South Africa in the 1980s and 1990s on alternative constitutional models for the country. Those advocating a unitary state for a non-racial South Africa levelled many accusations at those advocating federal and separatist solutions, and *vice versa*. Up until the 1980s and 1990s, very little academic analysis had been undertaken of what the implications of a unitary state might be for a non-racial South Africa. In a very preliminary way in a conference paper titled, A Unitary Constitution in a Post-Apartheid South Africa, I attempted to establish more precisely what the electoral implications of a unitary constitution and a single member constituency system might hold for South Africa.

In view of the many variations of state organisation under unitary constitutional models, and of the degree of flux in which the South African constitutional debate was at the time, I decided to study neighbouring states to explore the processes and factors determining their adoption of centralised unitary constitutional forms. The belief was that a study of this nature might make more information available to states intending constitutional reform, and which would enable them to learn from the specific constitutional experiences of these states.

The organisation of the state, and whether power be centralised or decentralised, has been debated for perhaps twenty-five centuries. The historical debate has often centred around amongst others, general questions concerning the best relationship between state and society, centre-periphery relations, the state and constitutionalism, or in terms of monism and

pluralism. The debates which took place in South Africa and in neighbouring states over the best form of constitution, are thus nothing new. They have a long history and deal with some of the questions of politics which have endured for many centuries.

It is intended that this thesis will provide a basis for a more thorough understanding of the origins of unitary constitutional forms, and a reassessment of forms that work or do not work. The audience that this thesis intends to address are academics interested and involved in the study of constitutional issues, and also practitioners involved in reassessing constitutional forms.

The University of South Africa has provided me with generous financial assistance in undertaking the field research for my study. Financial assistance received from the Centre for Science Development (HSRC, South Africa) is also acknowledged. I am extremely grateful to both these institutions. The opinions expressed and conclusions arrived at in this thesis, are those of the author and are not attributable to either of the sponsors referred to above.

Numerous individuals and institutions have assisted in obtaining material for this thesis. The individuals include academic colleagues, interviewees in the field, librarians and archivists. I am extremely grateful to all of them. In particular I must thank my Promoter, Professor D.J. Kriek. Professor Kriek has been an enormous source of leadership and inspiration, and on a personal level, he has always been approachable and extremely helpful in so many ways. I must also thank Professor M. Wiechers of Unisa, who has found time in a busy schedule, to comment on drafts of all eight chapters. Finally, I must thank

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The Harvard method of referencing as laid out by Marlene Burger is followed throughout this thesis: see Marlene Burger 1992. Reference Techniques. Eighth revision. Pretoria: University of South Africa.

GENERAL NOTE

An attempt is made to use concepts consistently throughout the thesis. There are great differences in the literature on the usage of concepts. For example, concepts like state, government, structures and institutions are used in similar and different senses. In the chapter footnotes, definitions are given of these and other concepts as understood and used in this thesis. In cases where a particular author is referred to and his/her usage of a concept does not correspond with the way it is understood in this thesis, the preferred usage is placed between brackets after the concept.

SUMMARY

ORIGINS OF THE CENTRALISED UNITARY STATE WITH SPECIAL REFERENCE TO BOTSWANA, ZIMBABWE AND NAMIBIA.

The purpose of this thesis is to describe and explain the origins of centralised unitary constitutional forms adopted at independence, with special reference to the pre-independence period of colonial rule and the states of Botswana, Zimbabwe and Namibia. Since the states of the world are either unitary or federal, an attempt is made to distinguish the unitary constitutional form from federation by contrasting both concepts. The three states under study are identified as centralised and unitary by referring to political, historical, legal, administrative and fiscal criteria. The theoretical and practical origins and explanations for the adoption of unitary constitutional forms in the European and African context are explained. First, the theoretical origins of monism, pluralism, dualism, absolutism and sovereignty and the thoughts of a number of classical theorists are discussed. Next the practical origins, the statements and perceptions by members of African nationalist elites supportive of unitary states in Africa in the colonial and early post-colonial period are referred to, in partial explanation for the adoption of this constitutional form. British constitutional practices and precedents are also discussed.

Further, to explain the origins of the centralised unitary state in Africa, the three case studies of Botswana, Zimbabwe and Namibia come under discussion. A four stage conceptual scheme devised by Etzioni and modified for the purpose of this thesis is utilised to analyse and explain the origins of the centralised unitary state in the three case studies of Botswana, Zimbabwe

and Namibia. A variety of factors both historical and contemporary, internal and external to these countries are identified and analysed. These factors include amongst others, early settlement patterns and conflicts, British colonial practices and precedents, the perceptions and ambitions of nationalist movements and elites, relationships with neighbouring states, the climate of opinion, and the requirements of nation-building and political stability.

The thesis is concluded by comparing the experiences of the three countries and, setting out several inductive propositions determining under which conditions these states adopted centralised unitary constitutional forms in preference to decentralised ones, federation or partition.

Finally, the thesis is concluded by referring in a Postscript to the post-independence constitutional reassessment in the three countries concerned, the constitutional reassessment process in Africa in general, literature references to this process, and the prospects for constitutional reform on the continent.

Key terms: Unitary; unitarism; centralisation; centripetal; federation; monism; absolutism; Botswana; Zimbabwe; Namibia.

ORIGINS OF THE CENTRALISED UNITARY STATE WITH SPECIAL REFERENCE TO BOTSWANA, ZIMBABWE AND NAMIBIA

Chapter 1

INTRODUCTION

1.1 THE ORGANISATION OF THE STATE

The individual states¹ of the world manifest themselves as either unitary or federal constitutional forms² (Van Vuuren & Kriek 1983:141). In the contemporary world, the overwhelming majority of states have adopted a unitary constitutional form. Of the more than 160 states which existed in the world at the end of the 1980s, approximately ten percent were organised as federations. This figure does, however, vary, depending upon one's definition of a federal constitutional form (Duchacek 1986:93; Blondel 1990:229). These constitutional forms are, for the purposes of this thesis, defined in chapter 2.

1 The concept 'state' is used in a number of different senses in the literature referred to in this thesis. For the purposes of this study, 'state' is considered to have the following characteristics: to be a geographic territory extending over a large or small area; to consist of a large or small population, which may be culturally heterogeneous or homogeneous; and to be sovereign, ie. to have the capacity to make, change and enforce laws. The word 'state' is used by a number of authors, like Bratton (Hyden and Bratton 1992) and Chazan et al.(1992) as an all-embracing concept that includes what is understood by the word 'government' (see 3 below) In this thesis, a distinction is made between the two concepts where possible.

2 A 'constitutional form' refers to either a unitary or federal constitution which organises government within a state.

Every state in the world has a government³ which impacts upon its public domain⁴. The relationship between the government and the public domain is organised and regulated, usually by a written body of fundamental law referred to as a constitution. In addition, states may have rules, either written or unwritten, which manifest themselves as conventions and customs, and ordinary statute and case law which may assume a constitutional character and function.

According to Blondel (1990:211), the word 'constitution' has three meanings:

- First, a 'constitution' may refer to a series of prescriptive arrangements which are summarised in the expression 'constitutional rule' and which tend to refer to a form of government which is liberal, emphasises restraint in its operation, and gives maximum freedom to its citizens.
- Secondly, a 'constitution' may refer, in a descriptive sense, to the actual organisation of government within a state. According to this formulation, all countries have a working constitution.
- Thirdly, a 'constitution' may refer to an actual document written at a specific time, which establishes a government or governments

³ All states have structures or institutions (used synonymously in this thesis) to perform various functions. A 'government' is, 'that organisation in which is vested ... the right to exercise sovereign powers' (Strong 1966:8). The structures within a state are referred to generally as 'the government'. The functions performed by the structures of government are eg., the making of authoritative policy, the execution, administration and adjudication of policy. Governmental structures may also be organised in different forms, eg., either presidential or parliamentary.

⁴ The '*public domain*' refers to those areas within the geographic state where governmental structures administer and regulate activity. It can be distinguished from the private domain, in which non-governmental structures like political parties and commercial enterprises administer and regulate activity.

within a state, structures, institutions⁵ and procedures, and regulates the relationship between them and the public and private domains.

A constitution may be seen as the product of a complex interaction over varying periods of time, between individual and group actors, both within the public and private domains and sometimes the international political system⁶. This thesis focuses on the constitution in the last-mentioned sense, as an actual legal document which provides for the establishment and organisation of governmental structures and regulates the relationship between them within a geographic state. When referring in this thesis to the centralised unitary state, the understanding is that one is referring to the constitutional state: that is the state governed in terms of a constitution. All three case studies referred to below were constitutional states at the time of independence. By contrast, many African states have remained centralised and unitary after independence, but not necessarily constitutional.

1.2 PURPOSE AND SCOPE OF THE THESIS

The purpose of this thesis is to describe and explain the origins of centralised, unitary constitutional forms adopted at independence, with

⁵ *'Structures and institutions'* are sets of political actors, like cabinets and parliaments, which perform functions within the state.

⁶ The term *'international political system'* refers to foreign governments which have influenced the constitution-drafting processes for a particular country, as distinct from a domestic political system, where a set of structures, processes and institutions generally perform those functions which may be defined as political.

special reference to the pre-independence period of colonial rule, in the states of Botswana, Zimbabwe and Namibia.

This thesis aims, moreover, to lay the foundations for additional attempts to explain the origins of unitary constitutional forms in other African states, and further to provide a basis for more in depth studies on how centralised unitary constitutional forms in other African states may have influenced the later political, economic and social crises afflicting them from the 1980s and beyond.

It is maintained by a number of authors, referred to below, that the foundations for the post-independence unitary state, which became increasingly centralised, were laid during the pre-independence period. The institutions and structures of the African state as it exists at the present time, is a legacy of colonial rule and has become a problem for much of Africa. By describing and explaining the origins of centralised unitary constitutions as important devices for the organisation of the colonial state, this study will contribute to the reassessment of the performance and constitutional forms of centralised unitary states in the post-independence period which have had varying degrees of success or failure. Processes of 'reassessment', 'reconsideration', 're-examination' or 'reform' of constitutional forms and institutions are taking place at present in a number of African countries. It is therefore believed that this thesis will partly assist in solving the problem of reassessing constitutional forms in Africa with a view to devising more suitable constitutions.

It is not the purpose or within the scope of this thesis to study in depth the later processes and the successes or failures or consequences or impact of the

post-independence centralised constitutional unitary state. Only brief reference will be made to the reassessment or reform process in the Postscript.

The consequences or impact of the centralised constitutional unitary state have many dimensions, political, economic and social. The specific linkage between the centralised constitutional unitary state, the centralised unitary state and performance in the political, economic and social spheres is only tentatively being explored and debated in the literature at present and usually falls under the general heading of the reassessment of the African state. A great deal of field work is necessary and still needs to be undertaken on this issue.

The field work necessary to undertake an investigation of this nature is also not within the scope of this thesis. Some of the literature pertaining to the reassessment of the African state and decentralisation trends will however be referred to in the Postscript (chapter 8).

In the context of Africa, this thesis is concerned with the centralised constitutional unitary state which exercises its authority at the territorial level over geographic entities established by earlier colonial rule. It is, moreover, concerned with the origins of the centralised constitutional unitary state established at independence as opposed to a centralised non-constitutional unitary state, a decentralised unitary state or federation, or a partitioned state. Different degrees of centralisation or decentralisation occur within the states of the world. What is considered to be a centralised unitary state is defined in chapter 2. The centralised unitary state happens to be preponderant in the African context.

1.3 THE UNITARY STATE IN AFRICA

Unitary constitutional forms are important organisational and regulatory devices among the states of the world, and particularly in Africa. Of the more than fifty states on the continent of Africa only Nigeria is considered, by most observers, to be a true federal state. Some observers also considered the Interim South African Constitution, 1993 and the final South African Constitution, 1996 to be federal in character. There are a number of reasons for the preponderance of unitary states on the African continent. Politics in Africa takes place, although not exclusively, around the associations and agencies (structures or institutions) within the geographic state. The organisation of the public domain has an important bearing on political, social and economic processes within the state (Chazan et al. 1992:37).

Africa, both before and after independence, has shown a particular propensity for 'statism'⁷. Statism manifests itself in the concentration of political, economic and social activity within the state. At various times in the colonial and post-colonial history of Africa, leaders both in and outside of Africa have chosen to re-structure the public domain in order to strengthen central authorities. One of the structural devices employed has been that of the unitary constitutional form, drafted during, or very often inherited from, the pre-independence period of colonial rule.

From about the 1980s, as mentioned above, most African states have been beset

7. 'Statism' refers to an approach followed by Political Scientists, notably Chazan et al. (1992:20 et seq.1). It succeeds the underdevelopment and modernisation schools as approaches to the study of the politics of Africa. Those following this approach focus on the state apparatus (governmental structures), its expansion and uses and abuses of power, and its relations with domestic groups and the international community.

by major political, economic and social crises, such as problems of legitimacy, declining economic growth rates and increasing unemployment levels. A number of scholars, like Young and Wunsch, maintain that these crises can partially be explained by referring to Africa's colonial and constitutional inheritance (Gifford & Louis 1988; Wunsch & Olowu 1990). As Young points out, most of the present crises lie, in part, in the characteristics of the state created during colonial rule (the colonial state) and can be traced back to the early stages of its construction (Gifford & Louis 1988:2).

Wunsch argues that colonial rule was characterised by, 'centralizing, elitist, and (sometimes) absolutist features', which have survived the post-independence period (Wunsch & Olowu 1990:29). Wunsch and Olowu argue that ethnic conflict, political inefficacy, administrative weaknesses, and economic stagnation can, in part, be understood as being caused by attempts over the last two decades to impose a high level of centralisation in contemporary African states (1990:1 et seq.). Further, Wunsch and Olowu hold that what has become the centralised state (defined in chapter 2 below) or, in their terminology, the 'overcentralised state' has failed in Africa, and that there is now a need to re-think the distribution of political power. They argue that the overcentralised state has contributed to the slowing down of economic development and has brought misery and starvation to millions of people on the continent (1990:7 et seq.).

Healey and Robinson refer to the use, by independent African governments, of colonial structures to control pluralism, to strengthen and extend centralised administrative structures and to facilitate authoritarian rule (1992:15). They claim that:

The autocratic and hegemonic imperatives of the colonial state endured beyond independence and provided the organisational framework for its post-colonial successor. The statist legacy ... was to persist and deepen after independence (1992:22-23).

The performance of the post-independence centralised state is further being reassessed in terms of the notion of 'governance'. A 'governance' approach to state performance relates to issues of state responsiveness and accountability, and the impact of these factors on political stability and economic development.

As pointed out above, the general trend within the African state has been towards a high degree of centralisation and, in the process, the state (government) has become 'weak' or 'soft', that is it has lost the capacity to carry out many of its functions. The consolidation of power at the centre has meant that the state (government) needs to extract considerable resources from society - that is the public and private domains - most of which it spends on itself. The 'weak' or 'soft' state (government) is also characterised by an incapacity to promote economic development, a decaying economic and social infrastructure, the enfeeblement of the rules of the political game, insufficient state legitimacy and inadequate state (government) coercive power (Bratton & Rothchild in Hyden & Bratton 1992:263).

Zartman refers to 'Collapsed States, The Disintegration and Restoration of Legitimate Authority'. State collapse he says, involves the breakdown of the governmental superstructure and also that of the societal infrastructure. A collapsed state is an extreme case of a governance problem where a regime

after having been in power for a long time, loses the ability to satisfy the demands of various groups in society (Zartman 1995:7-8). Zartman argues the case for the 'reconstruction' or 'reconstitution' of the African state. This issue is given further consideration in the Postscript (chapter 8).

Chazan, Ravenhill, Mortimer and Rothchild, in a combined study, also advance reasons for this re-examination of state (government) power. Many states were unable to gain the trust of their populations; states (governments) developed costly and unwieldy administrative and coercive apparatus; public funds were misused; support dwindled for state (government) leaders; and formal institutions were unable to fulfil even basic tasks (Chazan et al. 1992:64-65). They refer to the phase of 'reconsideration of state [government] power' through which African states were moving in the 1980s and 1990s (1992:64). This is given further consideration below.

Statements on the origins of independence constitutions in the literature tend to be general in nature. For example, Chazan et al. note that the,

political frameworks [constitutions] devised at the time followed either variations on the British Westminster model of parliamentary democracy or the more centralist model of the Fifth Republic in France. In each case, special pacts were made with the inheritors, and special provisions were introduced to take local conditions and specific colonial interests into account (1992:45).

In this general statement, no indication is given, for example, of the 'special pacts' or 'specific colonial interests' taken into account in the

adoption of constitutional forms at the time of independence. Similarly, a matter discussed in chapter 3 below, very little indication is given as to the adoption of a particular constitutional form, whether unitary or federal, in studies dealing with specific countries.

As referred to above, the foundations for the centralised post-independence state (government) were laid in the colonial period. An analysis and explanation of the origins of one of the foundations or dimensions of the post-independence centralised unitary constitutional form could thus contribute towards an understanding and reassessment of the performance of the post-independence African government. The assumption is that before one can reassess contemporary constitutional forms, one has to understand the origins of earlier constitutional forms.

1.4 LITERATURE ON THE UNITARY STATE

Little has been written specifically on unitary constitutional forms in general, or on their origins and application in Africa, in particular. By contrast, there are many publications on federations and federalism, its successes, failures and prospects in the First and Third Worlds. Among the many examples are Wheare (1963), Riker (1964), Currie (1964), Mawhood (1984(a) and (b)), Burgess (1986) and Elazar (1991).

Very little reference is made in the literature to the origins of and specific reasons for the adoption of unitary constitutional forms at the time of independence from colonial rule, either in the First World or the Developing World. The assumption in this thesis is that constitution drafters have had a choice between adopting centralised or decentralised unitary or federal

constitutional forms. The literature on Africa, during the pre-independence and independence periods, deals largely with the politics of that period rather than the specific choices and factors involved in adopting unitary or federal constitutional forms. The literature deals, for example, with goals of African leaders, and the political instruments used to achieve those goals. 'The search for political stability' is one such goal aspired to by leaders of African nationalist movements at the time of independence (Heeger 1974:47).

Another desired goal of African leaders, is that of 'nation-building' (Rivkin 1969:7 et seq.). A number of political instruments have been used to achieve these goals before and after independence, for example, the centralisation of political and administrative power, personalised rule, one party rule and military involvement in the governing process. The acceptance of a unitary constitutional form is only one device for realising these goals. It is maintained in this thesis that institutional and particularly constitutional forms as important organising devices within the African state, have been downplayed and even ignored in the literature and by elites. The importance of constitutions and constitutionalism is now again coming into focus as referred to in the Postscript (chapter 8).

One of the few debates reported in the published literature concerning the desirability or non-desirability of unitary or federal constitutional forms in the African context took place in 1908-1909 at the National Convention of the former South African colonies. General J.C. Smuts, a future South African Prime Minister, argued strongly in favour of a unitary South African state (Napier:1991).

With rare exceptions, one being Rivkin (1969), the published literature on the

politics of Africa to the north of the Limpopo river has little to say specifically on the unitary state as a stabilising and nation-building device in the newly independent African state. Another exception was the debates concerning the merits or demerits of a unitary or federal constitution by Obafemi Awolowo, who wrote in 1966 on the choice of an appropriate constitution for Nigeria. Because Nigeria was a multilingual and multinational country, he maintained that a federal rather than a unitary constitution was best suited to its needs.

More recently, a new interest in unitary forms of government and unitarism in Europe and Africa has developed, giving rise to a body of literature on the topic. This has resulted from a reassessment by European and African countries of their unitary constitutional forms in the light of the need, for example, for better governmental structures, greater governmental accountability, and economic development.

Some examples of published literature on European unitary forms are a report by the Royal Commission on Local Government in England 1966-1969; Alen 1975; Page & Goldsmith (1987); and Toonen (1987).

Examples of the published literature on African unitary forms, usually dealt with under the headings of centralisation/centralism or constitutionalism or the role of institutions and constitutional reform, are Mawhood (1983, 1987, 1989), Shivji (1990), and Wunsch & Olowu (1990), Aron (Ellis 1996) and Dramé (Ellis 1996).

In South Africa a renewed interest in the unitary state came to the fore in the 1980s and early 1990s, as a result of ongoing political and constitutional

changes. The literature on unitary constitutional forms and South Africa has appeared mainly in the form of conference papers, for example, Napier (1989), the Newick Park Initiative (1990) and Asmal (1990).

1.5 A THEORETICAL MODEL

There is no theoretical model presently in existence for the specific description, analysis and explanation of the origins of unitary constitutional forms.

Mawhood has devised a model of state formation in tropical Africa, which will serve to situate the evolution of the pre-independence centralised unitary colonial system within the context of the broader historical evolution of the state in Africa (1989:242). Although Mawhood's theoretical model refers to tropical Africa, it will also be applied to Botswana and Namibia, whose land mass falls partly to the south of the Tropic of Capricorn. In terms of Mawhood's model, the state in tropical Africa has undergone seven stages of evolution. These are as follows:

- Stage 1: Until the late 19th century, rule in tropical Africa was by ethnic or kinship units. The modern state had not yet been defined;
- Stage 2: Between the years 1880-1914, colonial rule was imposed over the present area of Africa with military support;
- Stage 3: In the early 20th century administrative patterns were influenced by Napoleonic or British-Indian style rule;

- Stage 4: Between 1919-1960, some regional organisation was established, together with the patchy introduction of autonomous local government, which was more generally established in the 1950s;
- Stage 5: In the 1960s, the newly independent African governments became committed to centralised action, regions were suppressed and local government was weakened or abolished;
- Stage 6: In the 1970s, weak autonomy was granted to local units, but under central administrative control;
- Stage 7: In the late 1970s and onwards, autonomous local governments were created in some states.

Chazan et al. refer in their study, in even greater detail than Mawhood, to the constructions of the public arena (domain) since independence. These authors identify the following three phases through which the post-independence African state has evolved (1992:46 et seq.).

- Phase 1: The Concentration of State Power. This phase refers to the first few years of independence, when the new leaders of African states attempted to reorganise the public realm (domain) so as to concentrate power at the political centre. Institutions permitting formalised opposition to the ruling group, like quasi-federal provisions in pre-independence constitutions, were eliminated.
- Phase 2: The Elaboration of State Power. During the 1960s and 1970s, African leaders further moulded the various

components of government, including the public sector, the coercive apparatus, the legal order and political institutions, in order to expand centralised state control.

Phase 3: The Reconsideration of State Power. By the late 1970s and early 1980s, most African states were undergoing an organisational crisis during which they began to re-examine the heavily centralised statism of the first few decades of independence.

The above provides an outline of the general pattern of state evolution in tropical Africa. There are a number of deviations from this pattern, for example, the experiences of Zimbabwe and Namibia which became independent much later than most countries in Africa. The content of this thesis roughly coincides with Stages 2 to 4 of Mawhood's model. Phase 3 of Chazan et al. is significant for its reference to the 'reconsideration of state power' or 'reassessment of state power' and the re-examination of inheritances from the colonial era, an issue briefly dealt with in the Postscript.

Etzioni (1965) has devised a four stage conceptual scheme (which he refers to as a paradigm) of state integration applicable more particularly to European integration, which is explained in chapter 3 below. A modification of this conceptual scheme is used in this thesis to order and conceptualise the processes according to which centralised unitary constitutions have been adopted in Botswana, Zimbabwe and Namibia. In terms of this conceptual scheme, as modified, the African state evolves from the *pre-centralised stage*, through a *centralisation stage*, a *take-off stage*, and finally enters a *termination stage*. This conceptual scheme is suitable for the evolution of the African

state in the pre-independence period, however, it would require further modification to accommodate the post-independence Stages 5, 6 and 7 and Phases 1 to 3 of the Mawhood (1989) and Chazan (1992) theoretical models, as referred to above.

The pre-independence stages, as mentioned above, are relevant to the post-independence stages in the evolution of the African state, in so far as they have laid the foundation for an increasingly centralised state from the time of independence until the 1970s.

1.6 METHODOLOGICAL CONSIDERATIONS

1.6.1 The origins of constitutions

Constitutions have a political content and cannot be viewed simply as neutral legal documents. All constitutions have an ideological basis. The political-legal nature of a constitution is determined by a number of factors, amongst which are included ideology and culture, a country's history and international criteria (Van Maarseveen et al. 1978:234). The approach in this thesis is to describe and explain these and other factors which have impacted upon or influenced⁸ the origins of African constitutions.

A further methodological issue is that of whether a constitution is specifically a product of the country itself rather than of another country. Van Maarseveen and Van der Tang refer to original and derivative

⁸ Factors or forces both strong and weak 'impact' upon or 'influence' constitutional forms. 'Influences' are considered to be weaker than 'impacts'. Reference in this thesis will be made to factors 'impacting' upon constitutional forms which will include weaker 'influences'. Both 'impacts' and 'influences' nevertheless change constitutional forms.

constitutions, and autochthonous and allochthonous constitutions (1978:259).

Original and derivative constitutions are also referred to as creative and imitative or stereotyped constitutions. An original constitution refers to a new political-legal document drafted for a particular country. A derivative constitution refers to a constitution derived, in part or in full, from a constitution of another country.

The distinction between autochthonous and allochthonous refers to whether a constitution emanates from within a country itself, or whether it has been imposed from outside or borrowed from elsewhere. These distinctions are not clear-cut. An initial constitution can, for example, be allochthonous, and a successive constitution can be a derivative of this constitution or an original autochthonous constitution bearing no similarities to the previous one. Similarly, a constitution can be autochthonous and later derivative.

Van Maarseveen and Van der Tang (1978:259) caution, however, that constitutions are seldom completely original, but are always based upon what has gone before. These distinctions are therefore purely ideal types.

The issue then is the degree to which the constitutions of the three case studies referred to in this thesis have been created anew, derived from what has preceded them, or been derived from the country itself or imposed from outside. In this thesis these determinations are based upon the degree to which a constitution differs from a previous constitution, and the degree to which decision-making was undertaken within the boundaries of the country or outside its borders.

The origins of constitutions can only be established through empirical description and analysis and, on occasions, subjective judgements. The distinctions based on the origins of constitutions can be employed in referring to those of Botswana, Zimbabwe and Namibia. They are of use and importance in determining the origins of the main inputs to the respective constitution-drafting processes. For example, if a constitution is considered to be allochthonous and is drafted by the British Colonial Office, then the important factors impacting on this process must be sought in British constitutional philosophy and practice. The stages in the drafting of an allochthonous constitution therefore have to be analysed. Further reference is made to these stages in chapter 4.

1.6.2 The written document and practice

The written document that contained the principles of the constitutions for Botswana, Zimbabwe and Namibia, respectively, at independence, is the focus of this thesis. A further concern is the degree of centralisation or decentralisation of power in the respective states.

A written constitution does not always reflect the practical implementation of constitutional principles, like the degree to which power is centralised or decentralised within a state. Constitutional principles in practice may be implemented to the letter, partially implemented, implemented only a number of years after the acceptance of the constitution, or they may be totally ignored. Constitutions moreover vary in their scope. What might be a constitutional principle in one constitution might be excluded from another. A careful comparison of constitutions is necessary to ensure that they include

similar constitutional principles providing for example for the centralisation or decentralisation of power.

As far as the practical implementation of constitutional principles is concerned, depending upon the degree to which an independence constitution differs from the preceding constitution, its implementation may lag behind the written document. For example, in the case of independent Namibia, regional administrations only became operational about three years after independence.

Empirical measures of centralisation, which are discussed in chapter 2 below, can consequently only be applied once structures provided for in the constitution have been created and are operational. The times at which empirical measures of centralisation have been applied will thus vary between the case studies, depending upon when practical realities reflect constitutional provisions.

Constitutions may not have much of an impact on the lives of a state's citizens in circumstances of military rule, or where a single person, or what is termed a 'personal ruler' rules. The three case studies under consideration, as already referred to above, are regarded as constitutional states, that is, states which function in terms of the principles of a written constitution.

The locus of political power and decision making may also shift without any amendment to a constitution. In recent decades in many states, whether unitary or federal, the locus of power has moved towards central authorities (governments) (Blondel 1990).

This thesis aims to describe and explain the factors which contributed to the formulation of a written centralised unitary constitutional document at a specific point in time, that is, at independence.

1.6.3 The descriptive and explanatory methods

In order to explain the origins of the centralised unitary constitutional form one needs to describe the realities that formed the environment for its evolution. Description contributes towards explanation. Explanation may be undertaken in terms of reasons, causes and functions served (Van Dyke 1960:22 et seq.).

Political phenomena result from the actions of human beings. One therefore needs to explain the actions of individuals and groups in so far as their constitutional preferences are concerned. This may include, for example, individual leaders and political groupings. One needs, moreover, to explain the causes for actions, to explain a condition or a state of affairs that has contributed to a particular constitutional form. These may include, for example, early colonisation processes and geographic factors. Finally, political structures may perform certain functions within a state. A centralised unitary constitution may, for example, perform the function of nation-building.

More generally, in order to explain in a comprehensive manner the origins of the centralised unitary state, reference must be made to existing empirical and normative theories; the views and ideologies of African elites; and instances where centralised unitary constitutions have been adopted. Implicit in much of the process of political enquiry is comparative analysis, the

function of which is to identify uniformities and differences and to explain them (Macridis in Lewis et al. 1978:16).

In the final chapter of this thesis an attempt is made to explain the most important factors determining the origins of a centralised unitary constitutional form in Botswana, Zimbabwe and Namibia. References are thus made, in a comparative context, to these three case studies.

1.7 APPROACHES

Approaches denote the criteria by which relevant data are selected for description and explanation.

The evolution of a constitution can be described and explained in terms of a number of approaches and explanatory hypotheses. These include the following: historical, elite, ideological, and functional approaches (Van Maarseveen et al. 1978:237-238; Van Dyke 1960:116 et seq.). Explanatory hypotheses are posited at the beginning of each of the discussions of the three case studies. These hypotheses suggest tentative explanations for the evolution of the unitary constitutional form. They are used, together with Etzioni's conceptual scheme, to further organise the case study content. The hypotheses posited are later confirmed in the body of the relevant case study.

1.7.1 The historical approach

Constitutions are the products of history. In terms of this approach, historical factors are identified and connections made which explain the evolution of a particular constitutional form. This thesis covers an

historical time period. The general approach to the thesis material is historical and therefore the three approaches referred to below can be seen as supportive of this approach.

1.7.2 The elite approach

Much of the analysis in this thesis focuses on political or leadership elites, since it was a relatively small number of decision makers who influenced the adoption of unitary constitutional forms in the three countries concerned. Elites are those who possess most political power and make the most important political decisions in, or for, the population of a state.

Elites contribute towards constitution making over a period of time. They also have ideological, functional and psychological objectives in opting for one constitutional form in preference to another. Thus the elite approach must be utilised in combination with other approaches.

1.7.3 The ideological approach

This approach involves value judgements, that is the values that contribute towards a particular constitutional form. Characteristic of this approach is the advocacy by political leaders of a strong centralised government.

Reference is made to some of the contemporary thought of African leaders which has contributed to the adoption of unitary constitutional forms in order to delineate the ideological climate prevailing at the time of their adoption, particularly in Africa.

1.7.4 The functional approach

Constitutions are one of many phenomena in a society. They are also a component of the socio-political system. The questions of whether a constitution creates, preserves or effects a socio-political system is described and analysed in this study.

1.8 RESEARCH TECHNIQUES

In the literature on African constitutions (referred to in chapter 4 below), the reasons for the adoption of federal constitutional forms are generally spelled out, as are the objections to federal constitutions. The reasons for the rejection of unitary constitutional forms are also given, although not in any great detail. The positive arguments in favour of unitary constitutional forms, by contrast, receive little attention. Often, arguments in favour of federations are, by implication, arguments against unitary constitutional forms. Thus a number of inferences have to be made.

As African states, the written material on Botswana, Zimbabwe and Namibia is relatively easily researched, since reports on debates held in the pre-independence legislatures are readily accessible, as are other archival sources. The studies of Botswana, Zimbabwe and Namibia also involve research in the field.

A number of techniques have been followed in this study in eliciting the required information.

Elites involved with or knowledgeable about the independence processes of the

respective countries under consideration have been interviewed. Further, primary sources have been consulted, including contemporary newspapers, legislative council debates and archival collections. Secondary sources have also been consulted.

The reasons for adopting one or other constitutional form are not always spelled out. Often subjective judgements have to be made as to whether the reasons advanced, or views taken, are, in fact, supportive of unitarism and a unitary constitutional form. For example, the support for the creation of a single legislative council within an ethnically divided territory may also be taken as support for a unitary constitutional form.

1.9 FURTHER RESEARCH DIRECTIONS

This thesis focuses on the detail of the pre-independence period of three particular African states. It focuses, moreover, on a single dimension of the constitutional evolution of the three states. This sets up possibilities for similar research undertakings.

Other African states could be included as research topics on the origins of the centralised unitary state, in order to be able to generalise more widely and with a greater degree of accuracy.

Further, other centralising structures, like the role of the executive, the single political party and bureaucracy could be researched. A more in-depth analysis of ideology and its impact on the creation of the centralised unitary state could also be examined. The analysis of the evolution of the increasingly centralised unitary state could be extended into the post-

independence period. The impact or consequences of the centralised unitary state and contemporary linkages between constitutional form and political, economic and social decay and conflict could be examined on a broader scale than has already been undertaken, through empirical field research, as referred to in the literature above and in chapters 4 and 8.

A tentative start has been made in this thesis to devise and refine empirical indicators for degrees of centralisation within the state. These indicators could be further refined.

As Bratton and Rothchild point out, in the rapid rush towards decolonisation and the crystallisation of authoritarianism, little opportunity was given to African leaders to legislate for a form of government rightfully their own (Hyden and Bratton 1992:284). In establishing such governments, Africans need to understand the origins of the centralised unitary state and the nature of the relationship between the state and society. Africa is at present undergoing a process of democratic transformation and the origins of existing political structures need to be understood before they can be reformed.

1.10 ORGANISATION OF THE THESIS

Before an in-depth analysis of the origins of the centralised unitary state can be undertaken, clarification is necessary concerning the definitions of concepts relating to unitary and federal states and the centralisation and decentralisation of power.

Chapter 2 of this thesis is devoted to an exposition of the usage of key concepts.

Chapter 3 contains a brief overview of the evolution of the historical unitary state and some of the theory, both normative and empirical. The evolution of the historical state is important for an understanding of the distribution of power in the contemporary state, as well as of some of the assumptions upon which the contemporary state is based. Both descriptive and prescriptive or normative theories on the state are discussed where they relate to its historical evolution.

Chapter 4 contains an overview of the literature on the arguments for and against the unitary state within a general African context, as spelled out by African leaders and commentators on Africa's constitutional and political evolution.

Chapters 5, 6 and 7 deal with the adoption of centralised unitary constitutional forms in Botswana, Zimbabwe and Namibia, respectively, at the time of independence. The material contained in these chapters is based upon field work interviews, archival and other primary and secondary sources. The evolution of the centralised unitary state is traced back to the early colonisation period. In each of the case studies several hypotheses are made and later confirmed.

Chapter 8 makes some general conclusions on the origins of centralised unitary constitutional forms, and compares the experiences of Botswana, Zimbabwe and Namibia as constitutional states at the time of independence. A number of inductive propositions are advanced, based upon the three case studies, as to when an African state is likely to adopt a centralised unitary constitutional form. In a Postscript, reference is made to constitutional reassessment in Botswana, Zimbabwe and Namibia in the post-independence period; the

reassessment process in Africa and literature sources; and the prospects for constitutional reform on the continent.

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Chapter 2

DEFINITIONS

2.1 INTRODUCTION

In the literature, imprecision and disagreement abound on the definition and use of political and legal concepts such as 'unitary', 'unitarism', 'federation', 'federalism', 'centralisation', 'decentralisation', 'deconcentration' and 'devolution'. The aim of this chapter is to define and explain these concepts as they are used in this thesis. Definitions of these concepts will serve, first to identify centralised unitary states as case studies; and secondly, to demarcate the scope of the thesis, and the factors and debates contributing to and surrounding the origins of centralised unitary constitutions in the three case studies of Botswana, Zimbabwe and Namibia. Further, it is intended that these definitions will also contribute to a greater clarity and consistency in the usage of these concepts by those writing on related issues. In this chapter, some of the political, historical, legal, administrative and fiscal dimensions of the above-mentioned concepts and other related ones will be focused upon.

2.2 UNITARY, UNITARIAN, UNITARIST, UNITARIANISM, UNITARISM, UNIFIED AND UNIFICATION

2.2.1 Unitary

An agreed upon definition of the word 'unitary' is central to this study. The *Oxford English Dictionary* (1989:78) defines 'unitary' in generic terms as: 'Of or pertaining to, characterized by, based upon, or directed towards unity'.

Unity must be distinguished from union which is a condition for the establishment of a federation.

As a political application, although not frequently used, the word 'unitary' may refer to the form of state (government) executive. One can refer to a 'unitary' or monocephalous executive, where the head of state is also the head of government, or to a dualistic or bicephalous executive, where the functions of head of state and head of government are divided between two offices (Selassie 1974:22). The word may also be used in an historical sense when referring to the creation of unitary parliaments from feudal structures existing in England from the thirteenth century onwards (Anderson 1979:114). Besides political and historical applications, the word 'unitary' has mathematical and physics applications which are not of concern in this thesis (Mackey 1989; Rogawski 1990).

The word 'unitary' is used on occasions in conjunction with the word 'state' (Strong 1966:80). The 'state' is defined in chapter 1 as having a geographic territory extending over a large or small area, a large or small population, and having sovereignty, that is having a political organisation and the capacity to make, change and enforce laws. 'Unitary' refers, in this sense, to the constitutional form within the geographic state. 'Unitary' may also be used in conjunction with 'constitution' when it is taken to refer to the actual document establishing institutions and regulating relationships. In terms of definitions by Strong (1966:84) and Alen (1975:13), there are two essential qualities of a unitary state and unitary constitution: the central government or authority must be supreme; and there must be an absence of subsidiary sovereign bodies.

For the purposes of this thesis, the definitions of Strong (1966) and Alen (1975) are followed. The problem of what is understood by a 'central government or authority' and 'subsidiary sovereign bodies' will be discussed below.

2.2.2 Unitarian

A 'unitarian', according to the *Oxford English Dictionary*, is one 'advocating, promoting, or directed towards national unity, union, or centralization in government and administration'. The concept may also be used to refer to 'an advocate of national or political unity; one who supports the union of several states into one confederation under a central government'. The concepts 'unity' and 'union' are explained below (1989:77). The word 'unitarian' thus refers to a person or group advocating the centralisation of government and administration within existing state boundaries. The word 'unitarian' was used frequently in the nineteenth century to refer to the unification movements in Argentina and Italy. It was also used by A.V. Dicey, a leading English constitutional lawyer writing in the late nineteenth century, to distinguish a unitary from a federal system of government (1967:155). Dicey referred to 'unitarian' and 'federal' systems of government. Used in this sense, the word 'unitarian' has since fallen into disuse.

2.2.3 Unitarist

The word 'unitarist' can similarly refer to one 'advocating, promoting, or directed towards national unity, union, or centralisation in government and administration' (*Oxford English Dictionary* 1989:77). The word 'unitarist' has its applications in contemporary constitutional discourse.

2.2.4 Unitarianism

The concept 'unitarianism' refers to persons 'accepting, professing or advocating the doctrines of unitarianism; belonging to a religious body or sect of unitarians' (*Oxford English Dictionary* 1989:78). According to Wright, 'unitarianism' refers to a 'liberal movement which developed within the congregational churches of New England in the eighteenth century, emerging as unitarianism in the nineteenth' (1976:3). Dicey also used the word 'unitarianism' to refer to the unitary constitutional model (1959:139). This term used in a constitutional sense has also fallen into disuse, and since about 1910 the word 'unitarism' has gained frequency for referring to a unitary constitution (*Oxford English Dictionary* 1989:78).

2.2.5 Unitarism

'Unitarism' is then understood to refer to the belief in and the existence of a unitary state. It will be used in this sense in this thesis. The word 'unitarism' may acquire additional meaning if compared with the concepts of 'federation' and 'federalism'.

2.2.6 Unified and unification

Newton, writing in 1923, refers to 'federal' and 'unified constitutions' in the context of the forming of associations between states. Where a part of the sovereignty of the associating states is placed in the hands of a common authority, he refers to a 'federation', and where a more complete association is formed between two or more states, he refers to 'unification'; and the written instrument regulating this relationship between the citizens and the

sovereign power, as either a 'federal' or a 'legislative union' (1923:2). Lord Durham who comes under discussion in chapter 4 below, refers to 'federal unions' and 'legislative unions' (Coupland 1945:Ivi). Both usages of the terms 'unified constitution' and 'legislative union' have, however, fallen into disuse.

2.3 FEDERATION AND FEDERALISM

'Federation' and 'federalism' have been defined by numerous authorities, including, for example: Wheare (1963), Strong (1966), Dicey (1967), Alen (1975), Van Vuuren & Kriek (1983), Duchacek (1986), Burgess (1986) and Elazar (1987).

Burgess, quoting King defines federation as,

'an institutional arrangement, taking the form of a sovereign state, and distinguished from other such states solely by the fact that its central government incorporates regional units in its decision procedure on some constitutionally entrenched basis' (1986:17).

Federations usually come about when independent states give up some of their independence to achieve union rather than unity. According to Strong, 'union' refers to the establishment of a federation, by states ceding certain sovereign powers to a central authority, whereas 'unity' refers to the ceding of all sovereign powers to a central authority and the creation of a unitary state (1966:104). A union of formerly sovereign states creates a federation, while a unity of formerly sovereign states creates a unitary state.

A conceptual distinction between federalism and federation with particular reference to Western Europe is drawn by Burgess. In terms of his definition, the federal principle is an organising one and federation is the organisational form that corresponds to this principle (1986:17). According to Burgess:

Federalism informs federation and vice versa, but it is also intricately woven into the discussion of 'pluralism' and 'plural societies' "Pluralism reflects a much broader theoretical concern than federalism. But federalism can still be fitted within it" (1986:19-20).

The notion of pluralism is referred to in chapter 3 of this thesis.

'Federalism', when shorn of its European cultural and historical context, can be taken to mean 'ideological position, philosophical statement and empirical fact' (Burgess 1986:20). 'Federalism' can then be regarded as signifying,

the recommendation and (sometimes) the active promotion of support for federation. This can take the form of an overtly prescriptive guide to action and/or a normative judgement upon the ideal organisation of human relations and conduct. It can also be viewed as empirical fact to the extent that it recognises diversity - broadly conceived in its social, economic and political contexts - as a living reality, something which exists independent of ideological and philosophical perceptions The way people live their lives and organise themselves is

intrinsically federal, it is a natural social reality expressive of multiple roles, aims and identities (Burgess 1986:20).

↘ Burgess holds that there may be federalism without federation, but there can be no federation without some matching variety of federalism (1986:21). He does, however, point out that these perspectives are 'contentious and contestable'. 'Federalism' he says, derives its meaning from its context.

It appears that 'federalism' is therefore embedded in the political culture of a political system. More specifically, a component of a federalist political culture may be the sentiment existing amongst populations who see local and regional authorities in their territorial state as the authorities they may look to for governmental performance in certain defined areas. They may also show their loyalty to and identify with these tiers of government, and protest against encroachment upon the legislative and administrative competencies of the same.

It is maintained in this thesis that 'unitarism' can then be regarded as the converse of federalism and refers to the, active promotion of support for a unitary constitutional order. It can also be a normative judgement upon the ideal organisation of human relations and conduct. Further, 'unitarism' can be viewed as an empirical fact in that while it recognises diversity in its social, economic and political contexts, it attempts to ignore or minimise that diversity. 'Unitarism' like 'federalism', might also be embedded in the political culture of a state. A unitarist may promote unitarism within a state, that is, the belief in, or the creation of a unitary state. In terms of a unitarist political culture, the central and highest authority may, in a similar way, be regarded by the population as the authority through which

they express themselves politically, with which they identify, and to which they pledge their loyalty.

Similarly, unitarism can exist in a political culture within a federation, just as federalism can exist without federation but as a component of the political culture of a unitary state.

For the purposes of this thesis, the words 'unitary' and 'unitarism' will be used. 'Unitary' I take to refer to a formal constitution, and 'unitarism' to the philosophy and processes underpinning the adoption and functioning of a unitary constitutional model.

2.4 THE UNITARY STATE

In terms of the definition derived from those of Strong and Alen, there are two essential qualities of a 'unitary state' as established in terms of a constitution: 'the supremacy of the central government or authority'; and the absence of 'subsidiary sovereign bodies'. These two qualities need to be explained in greater detail.

2.4.1 Supremacy of the central authority

In order to make and enforce laws, the state must have a supreme authority which is referred to as a government and is further defined in chapter 1 above. Government is, 'that organisation in which is vested ... the right to exercise sovereign powers' (Strong 1966:8). A government must also have military power or control over the armed forces, legislative power, and the power to tax and spend revenue. Central authorities or governments can consist

of a number of different structures each performing different functions. For example, government can be parliamentary or extra-parliamentary as in the British and American political systems; there might be a clear separation of powers between the legislature, executive and judiciary; government might be presidential or parliamentary in nature; the executive may be monocephalous or bicephalous, or power might be exercised through the personal rule of an individual, as is the case in a number of states in Africa.

One can also refer to unitary and federal constitutional forms where sovereignty is either concentrated or divided between central and lower tiers of government. What is important for the identification of the unitary state, is that political power is exercised by a single supreme government within the state. The structure of the central government, whether for example, it be presidential or parliamentary or elected on a constituency or proportional basis, is not of importance in defining the unitary state. Second- and third-tiers of government may nevertheless exercise power on behalf of a central government either as provincial, regional, district or local administrations as occurs in the three case studies under consideration in this thesis. Power can be highly centralised or decentralised for a state to also qualify as unitary.

2.4.2 Subsidiary sovereign bodies

The meaning of the concept 'sovereignty' has been vigorously debated in the literature. Strong says that: 'The problem of sovereignty is one of the utmost difficulty' (1966:80). Sovereignty is a key concept in the identification of unitary or federal constitutional forms. Raphael in an attempt to explain the concept of sovereignty claims that:

To say that the State is sovereign is to say that the State has supreme or final authority in a community, that its rules override the rules of any other association (1970:51).

The historical evolution of the idea of sovereignty is discussed in chapter 3 of this thesis.

Writing about the English constitution, Dicey avers that parliamentary sovereignty is the right of parliament

to make or unmake any law whatever; and, further, that no person or body is recognised by the law of England as having a right to override or set aside the legislation of Parliament (1967:40).

The question arising from this is, at what point is a subsidiary authority sovereign or not? In what circumstances has the central authority the right to override legislation of a subsidiary authority? No clear answer to this question can be found.

If a constitution does contain a special procedure to amend the powers of a subsidiary authority, then that constitution must be federal in nature. However, as Strong points out: 'Federalism [federation] is, in fact, of varying shades of completeness and exactitude' (1966:65). Although a constitution may incorporate a special amending procedure, in the process of identifying unitary and federal constitutions, one must, for example, examine the structures and functions performed by subsidiary authorities. Although subsidiary structures exist, they may have minimal functions or powers

allocated to them, for example, they may be simply advisory structures. The means of identifying a unitary or federal constitution may therefore lie in the degree of centralisation, decentralisation or deconcentration provided for in the state concerned.

In relation to both unitary and federal constitutional models, the concepts of 'autonomy' and 'devolution' are also used. 'Autonomy' is often applied imprecisely to refer either to powers exercised by second-tier authorities as sovereign powers, or decentralised or deconcentrated powers. The concepts of decentralisation and deconcentration are defined below. The concept of autonomy may refer to the exercise of decentralised, deconcentrated or devolved powers at second- and third-tier levels of government. A lower tier of government may be autonomous, but not sovereign. The concept of devolution should refer to the allocation of powers to a lower tier of government to be exercised as sovereign powers. Devolution is therefore one of the characteristics of a federation, in which lower tiers of government are sovereign in the exercise of certain powers. These powers cannot be removed except by special legislative procedure. This is the sense in which these two concepts are used in this thesis. If one uses the term 'autonomous authorities', one needs to qualify whether the term refers to sovereign or non-sovereign authorities.

2.5 CENTRALISATION, DECENTRALISATION, DECONCENTRATION AND THE UNITARY STATE

According to Duchacek, 'no national government, whether democratic, authoritarian, or totalitarian, finds it physically possible, administratively effective, or politically wise to enact and enforce all rules from the centre' (1986:59). Rule-making and rule-enforcing powers are thus divided vertically

and horizontally, that is, hierarchically in terms of appropriate superordination and subordination and co-ordinately in terms of specific functional or geographically determined responsibility (Duchacek 1986:59).

In terms of the vertical distribution of legislative and executive powers, certain powers may be granted to different tiers of government or territorial units below that of the central government. Similar powers distributed vertically by the central government may also be granted to a number of territorial units within the same state, hence the horizontal distribution of powers. The scope of authority granted to territorial units can vary greatly from state to state. This authority can also vary over time, and according to leaders' personalities. Such vertical distribution of authority is referred to as 'decentralisation' or 'deconcentration'. As a corollary to the decentralisation of power, one can speak of the 'centralisation' of political power.

The definition of the concepts 'decentralisation', 'deconcentration' and 'centralisation', and the measurement of the degree of 'centralisation' or the converse, the degree of 'decentralisation', elicit a great deal of debate and disagreement in the literature. An attempt will be made below to formulate a definition of the concepts 'centralisation' and 'decentralisation' by referring to a number of authorities in the field.

The concept of centralisation is relatively simple to define and yet it is complex to measure (Blondel 1990:223, Fesler 1965:536-537). Indicators of the extent to which decisions are taken at or away from the centre are impressionistic and therefore unsatisfactory. Blondel defines the concepts of 'centralisation' and 'decentralisation' as follows,

if one were to list all the decisions taken in a country by all the public bodies, that country would tend to be centralised if the proportion of the decisions taken by the central authorities was large to very large and tend, on the contrary, to be decentralised if the proportion was small to very small (1990:223).

The difficulty with this definition is the relative implication of what is meant by 'decisions taken'. Individual decisions, for example, can have large or small implications for the population of a country. As Blondel (1990) points out, this approach too is likely to be impressionistic and therefore unsatisfactory.

Gellar say that 'centralization is a somewhat static term that simply refers to the concentration of formal power within a single political authority' (Wunsch and Olowu 1990:131). This is yet another impressionistic definition. While the term tells us something about the structure of formal power, it does not tell one much about the relationship between the centralised state and the rest of society. The centralised state, for example, functions differently in France, which is a political democracy, from Africa, where the centralised state is formally powerful but in practice not all-powerful. Reference was made in chapter 1 to the 'weak' or 'soft' state, which is the condition typical of many African states. Once again this is a subjective definition.

According to Alen, the concepts 'centralisation' and 'decentralisation' may be elucidated with the question of whether all activities are carried out by the same structures for the whole state, or whether certain activities are carried out by different structures for distinct groups in the state (1975:13). Alen introduces the idea of different structures as a requirement

for decentralised government. This definition is useful in so far as centralised and decentralised governmental and administrative structures can be identified through legislative provision and practice, but it does not reveal much about degrees of centralisation and decentralisation.

Alen further identifies a number of legal criteria for centralisation of power in a state (1975:14-15). In terms of these criteria, the centralised authority has, in principle, no legal personality separate from that of the state. However, this is not an absolute criterion for the existence of a centralised state. Often legal personality is, for practical reasons, awarded by central government authorities to lower levels of government. The decisive legal criterion for a centralised authority is, according to him, the hierarchical capacity of the central authority to carry out its functions without a specific law empowering it (1975:14-15). In terms of Alen's legal criterion for a centralised state there is a co-incidence with the earlier definitions of a unitary state - 'the hierarchical capacity of the central authority'.

Alen also distinguishes between political centralisation and administrative centralisation (1975:16): the former refers to uniformity in legislation, and the latter to uniformity in the execution of laws and their administration. For the purposes of the quantification of centralisation through the use of fiscal measures, the emphasis is placed on legislative centralisation, that is the decision making by legislatures which becomes embodied in legislation providing for the allocation of money by government.

As mentioned above, there are different tiers of authority to which power can be decentralised. Political decision making can be decentralised from the centre to lower structures. Further, administrative decision making may be

transferred from the centre to lower structures, including autonomous and semi-autonomous organisations like parastatals. This process may be undertaken in two ways, either by deconcentration or decentralisation. The locus of decision making, as referred to by Alen (1975) above, either at the political or administrative levels in the public domain, is important in determining whether a state is centralised or decentralised.

In the case of many African states, political parties may be important decision makers, highly centralised and often hardly distinguishable from state structures. Because of the difficulty, in many cases, of distinguishing the political party from government structures, political party inputs to decision making, where they occur, are not distinguished from what would generally be considered government inputs.

Mawhood refers to the 'deconcentration' of decision making (1993:1). Administrative authority is delegated to officials, and may be amended or withdrawn without having to follow any legislative procedures. By contrast, decision making and administrative bodies may be created as bodies separate from the national centre, in which local representatives are given the authority to decide upon public matters. Their ability to operate in this way is provided for in ordinary legislation. This process, which Mawhood (1993:2) refers to as 'decentralization', is unlike devolution as referred to above, where power is allocated to lower authorities by a central authority and is entrenched constitutionally through a special amending procedure. It is, as has been mentioned, one criterion for federation.

The decentralisation and deconcentration of powers to lower tiers of government are delegated by a central government. They may also be retracted

by the central government, without having to follow any special legislative procedure. 'Delegation' refers to the process of entrusting decision-making power to a lower tier of government.

2.5.1 Centralisation and the unitary state

The degree to which the decentralisation of power is characteristic of a federal system of government, while the centralisation of power is characteristic of a unitary system of government, is by no means clear. In this regard Blondel claims:

It is only on average that unitary states have fewer 'decentralising' characteristics than federations ... it is therefore not possible to demonstrate rigorously that federal countries are more decentralised than unitary states (1990:231-233).

Centralisation or decentralisation of power is also considered to be part of the capacity of a particular authority to make decisions. The greater the decision-making capacity of a particular authority, the more power that authority possesses. The distribution of this decision-making power determines whether a state is centralised or decentralised.

Further, elected decision-making structures at a second-tier level of government are also not a good indicator of levels of centralisation or decentralisation. An elected authority may have very little decision-making power, and therefore a particular state may be considered to be centralised. To achieve greater certainty on whether a particular state may be considered

to be centralised, quantitative measures need to be devised.

2.6 QUANTIFICATION AND MEASUREMENT OF CENTRALISATION

This thesis is concerned with the identification of centralised unitary states by the degree of power exercised by formal structures at the first, second or third-tiers of government as provided for in a constitution. Political and legal criteria have been described above according to which a distinction may be drawn between a unitary and federal constitution. As pointed out, unitary and federal states can be centralised or decentralised. The need then is to utilise an empirical measure or measures in addition to political, legal and administrative ones, to determine whether a state is centralised or decentralised. Many of the indicators, discussed above, are merely impressionistic.

One can identify different administrative structures and legal competencies, and count, for example, the number of decisions made by different tiers of government, but these measures still do not indicate the degree of centralisation or decentralisation of power within a state.

Krane believes that:

Fiscal indicators of concentration/devolution of national control possess the highest utility for macrocomparative research because of their continuity over several decades and their manipulability, which facilitates rearrangement into comparable measures despite differences in national accounting practices (Picard and Zariski 1987:37).

Smith has also devised a number of quantitative measures of centralisation or decentralisation which may be used for comparative purposes (Jones 1980:138-141). To identify the centralised unitary states according to the parameters of this thesis, quantitative and fiscal measures devised both by Krane and Smith are utilised and modified where necessary.

Although Krane and Smith refer to additional measures, like the ratios of revenue collected by different tiers of government and the ratios of personnel employed by them, these measures will not be used, because of the difficulty in obtaining the relevant statistics.

Two measures are used here. First, total central government expenditure is calculated as a percentage of total government expenditure including that of regional and local authorities over a calendar or financial year. Secondly, total central government expenditure is expressed as a percentage of Gross Domestic Product (GDP).

2.6.1 Assumptions

My general assumption when employing fiscal measures of centralisation, is that the greater the amount of money expended by that government or authority, the greater its ability to influence the behaviour of individuals or groups. This authority can be described as being more or less powerful than another authority, in that it can affect the behaviour of others¹.

¹. The notion of 'power' is understood to refer to the ability of a person or group to affect the behaviour of other individuals or groups in specified ways, by the threat or imposition of some form of sanction. 'Power' in this thesis is understood to refer to a relationship between the ability of a central authority to allocate or withdraw fiscal resources and thereby secure compliance by lower tier authorities (Roberts 1971:171 P).

My contention is that when more than fifty-percent of expenditure is expended by the central government in a state, that state can be said to be centralised.

2.6.2 Explanation and application of fiscal measures

The benefit of using fiscal measures is that they take the identification and measurement of the centralisation and decentralisation of political power beyond political and legal criteria. Although an attempt has been made above to define a centralised unitary state in terms of constitutional and legal criteria, discrepancies may exist between legal form and practice as referred to in chapter 1.

As far as the first measure is concerned, actual total central government expenditure as obtained from a budget is expressed as a percentage of total expenditure expended by regional and local governments within a particular country in a particular calendar or financial year. The assumption is that expenditure of income, whether derived from taxes raised by central, provincial or local authorities, is indicative of the power possessed by those tiers of government. This is, however, not a perfect indicator as budgets of provincial and local authorities may, to varying degrees, be subject to the approval of the central authority; or certain allocations or transfer payments from central authorities to second- and third-tier authorities may have conditions imposed upon their utilisation. Requirements of this nature would, in turn, diminish the power of provincial and local authorities. A further problem with this measure, and particularly in the developing countries, is that statistics for second- and third-tier government expenditure are not always readily available. Estimates therefore have to be made.

As far as the second measure is concerned, developing countries generally publish their national accounts, or income and expenditure accounts for particular periods of time. National income can therefore be used as a rough indicator of the degree of centralisation or decentralisation of power within a state. It is the basic measure of economic activity and represents the total output of an economy over a given accounting period. The total value of output produced within a state's borders is referred to as gross domestic product (GDP). National income may be analysed in terms of a circular flow of income. The total value of goods and services produced by the factors of production like industries and government activities, is roughly equal to the incomes paid to those factors of production, which may include taxes and subsidies.

Thus, for the purposes of this thesis, it is assumed that decisions are taken by central authorities to allocate income collected. The greater the level of expenditure by the central authority in relation to the total economy, the more centralised are the decision-making structures and political power within that state. It should, however, be recognised that not all economic decisions are made by governments. This measure therefore is only a general indicator of where the major decision-making authority of a state lies. GDP is also not a completely accurate measure of national economic activity because of under-counting and over-counting of the value of goods produced.

However approximate the measure is, it is useful in a comparative context, as there is no generally accepted norm prescribing the degree to which a government should be involved in an economy. Some comparative statistics of expenditure and lending minus repayments as a percentage of GDP for a

particular year at the central government level are:² France (1982) 57; Sweden (1982) 71; United Kingdom (1982) 50; United States of America (1982) 38; Kenya (1981) 33; and South Africa (1981) 31 (Report of the Commission of Inquiry into Taxation 1986). For the purposes of this thesis, if expenditure amounts to 30 percent and more of GDP, then government is considered to be substantially involved in an economy.

2.7 EVALUATION AND CONCLUSION

Confusion abounds in the literature as to the definition and criteria for a unitary state, a centralised state and the relationship between the two concepts. The constitutional state and the notion of constitutionalism date from the time of the Greek city state. Concepts like unitarism and the unitary state have been recognised by academics and others only from about the early nineteenth century, although some of the theory behind these concepts dates back several centuries. Some of the early theoretical understanding concerning these concepts is discussed in chapter 3.

Four criteria for the definition and identification of centralised unitary states are used in this thesis: namely political, legal, administrative and fiscal criteria. However, these criteria are not yet watertight. Some of the difficulties in defining these concepts have been pointed out above. Impressionistic criteria, in addition to the four explained above, still need to be used.

². Further refinement of this indicator of centralisation is necessary. These ratios vary over time. Also accounting procedures may vary between countries. The average for these three countries was 47 per cent. To make a real comparison of government involvement in an economy, one needs a more representative sample of the countries of the world.

These four criteria will be applied in chapters 5, 6 and 7, in the process of justifying the identification of the three case studies as centralised constitutional unitary states.

As far as can be ascertained, no contemporary theory under the heading of 'unitarism' has been spelled out. A theory of 'centre-periphery relations' has been identified and perhaps comes closest to explaining the origins of the unitary state. Theories of the state and practical applications of unitarism will be discussed in chapters 3 and 4, respectively.

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Chapter 3

THE THEORY AND HISTORICAL EVOLUTION OF THE CENTRALISED UNITARY STATE

3.1 INTRODUCTION

This chapter has two aims: first to analyse some of the theories prescribing, describing, explaining, and conceptualising the processes that contribute to the creation of the centralised unitary state; and secondly, to analyse the historical origins of the centralised unitary state in terms of the notions of sovereignty and nationalism.

The theory in this chapter deals mainly with the centralised unitary state in a world context, whereas in chapter 4 some of the literature and theory pertaining, in particular, to the centralised unitary state in Africa will be surveyed.

3.2 THEORY AND THE CENTRALISED UNITARY STATE

The word theory has various meanings. Van Dyke (1960) discusses a number of meanings of 'theory' and categorises these under three headings: theory defined as thoughts, conjectures, or ideas; theory defined as the consummation of explanation; and theory defined as a conceptual scheme. The meanings of these three categories will briefly be examined as they relate to the theories described in this chapter.

3.2.1 Theory defined as thoughts, conjectures and ideas

In terms of this category, 'political theory is political thought or political

speculation, and all three terms involve the expression of political ideas or "philosophizing about government" (Van Dyke 1960:89). Also under this category, theories concerning the desirability and the means of promoting a sovereign centralised government will be discussed.

3.2.2 Theory defined as consummation of explanation

Theories, according to Van Dyke, deal mainly with description. The fuller the description is,

the more likely it is to include explanation; that is, the more likely it is to include statements describing connections and interrelationships among phenomena so as to give knowledge of reasons for, or causes of, actions or conditions (1960:100).

Theories which fall into this category do not only describe but explain the 'how' and 'why', that is, for example, how governments may be constituted, or why they are constituted in a particular way.

3.2.3 Theory defined as a conceptual scheme

Besides theory being political thought or explanation, it can also be regarded as a conceptual scheme, that is, a set of interrelated concepts which reflect thought and convey it. Concepts are, 'the product of a discriminating intelligence, which puts things that are alike into a distinct category, and names them' (Van Dyke 1960:96).

Once concepts have been formulated, there is, in terms of this theory, the

likelihood of a deliberate attempt to establish future relationships, which could lead to the formulation of yet more concepts, some of which will be on 'higher levels' (Van Dyke 1960:96). For the purposes of this thesis, theory in this category constitutes a view concerning the stages and processes through which unification within a state evolves, rather than an explanation of that process. Etzioni's theory of 'political unification', formulated in 1965, falls into this category.

3.3 THEORIES DEALING WITH THOUGHTS, CONJECTURES AND IDEAS

While a number of theories fall into this category, only some of the key theories dealing either directly or indirectly with the centralised state will briefly be discussed here.

3.3.1 Monism, pluralism and dualism

Monism is a term that provides a general description for theories which adopt a particular view as to the most desirable state. Monism addresses the nature of the state at a philosophical level. It is contrasted in the literature with the concepts of pluralism and dualism (Lipson 1981:134 et seq.). These interrelationships will be illustrated below by reference to specific definitions.

The meaning of the term, 'monism' is not spelled out in great detail in any specific body of literature, nevertheless it can be related to the philosophy behind the unitary state and unitarism. 'Monism' is used in commentaries like those of Mabbott (1958), Lipson (1981) and Vincent (1987) to label various theorists, some of whom are discussed below. Monism is implicit in some of the

ideas of these theorists. The theoretical advocates of a single, supreme sovereign, like Bodin for example, may be described as members of a 'monist' school of thought, although they are seldom labelled as such in the respective texts.

Monism is described by Roberts (1971) as:

The belief that the state is, and should be, the supreme and ultimate source of the laws regulating a society. While Monism does not exclude the existence of subordinate political or other social groups, it does deny that they possess any autonomous legal powers against the supremacy of the state (1971:129 M).

This definition is somewhat imprecise in that Roberts (1971) does not indicate what is meant by 'autonomous legal powers'. If it implies that the 'subsidiary sovereign bodies' (referred to in chapter 2) have no place in terms of monist thought, then monists can be likened to a unitarist school of thought and the belief in a unitary state.

The *Oxford English Dictionary* fails to define the concept with any greater precision. 'Monism is the notion ... that in any society there must be one supreme power or authority and this must be lodged in the state' (1989:1001). The 'state' is an ambiguous concept. If it is taken to refer to the central government or authority (as defined in chapter 2 above), then on the occasions when theorists are described as 'monists', they may also be termed 'unitarists'. There is, however, not an exact correlation between monism and unitarism. Monism is a philosophical notion referring to the nature of the state rather than a specific constitutional order.

Mabbott distinguishes between 'abstract monism' and 'concrete monism.'

Abstract monism,

is the theory that the State is the only association necessitated by the moral and psychological nature of man and that all others are to be prohibited or destroyed (1958:119).

Hobbes and Rousseau are considered to be 'abstract monists'.

'Concrete monism' according to Mabbott,

is the theory which welcomes within the State associations of all types but attempts to make them part of the State machinery, subordinated to its needs and its officers in every particular (1958:120).

In my view, Figgis (referred to below), may be considered to be a 'concrete monist', although he is also labelled a pluralist. Concrete monists may perhaps be described as permitting a greater degree of pluralism in the state.

Lipson attempts to illustrate a monist view of society by comparing it with the pluralist and dualist views (1981:135). In the monist view,

society is, or ought to be, a unity; and for it to be unified, there must be a tie that binds Men are distracted by the conflicting claims upon their allegiance of separate, and often rival, associations. The remedy for this is to discover some highest good that includes and supersedes the lesser. Next, it is

necessary to recognise one association as responsible for attaining that highest good. To this let the remaining associations be subordinated. Thus society can become and remain unitary in purpose and in organization (Lipson 1981:135).

According to a pluralist view of society:

The strivings of mankind cannot, it is argued, be folded within the embrace of one supreme good or final end. Men reach out for ends in the plural, not for one end in the singular; and as their purposes are plural, the structure of society must be likewise (Lipson 1981:135).

Lipson elaborates further on the distinction between the monist and pluralist views of society. The pluralist, 'stresses the role of society as a richly creative matrix of varied behaviour' whereas the monist,

is all for unity and for the virtues he hopes will accompany it - order, harmony, and singleness of purpose To unify society, it is not enough for people to feel that they belong together. The sentiment must be fortified with organization that establishes orderly and harmonious relations between groups by institutional procedures (Lipson 1981:136).

The dualistic view saw politics as a field co-equal with but separate from that of the church. Although dualism was practised during the medieval period, it was considered to be a failure, ushering in a new era of monism.

The state, Lipson (1981) claims, performed over the centuries an integrating function and assumed a monistic character. This role will be analysed when the historical state is discussed.

The concepts, 'abstract monism', 'concrete monism', 'pluralism' and 'dualism' can perhaps be viewed along a continuum. 'Abstract monism' might represent a belief in complete and total state centrism and control; whereas a 'dualistic' view might be supportive of a minimalist state and a high degree of decentralisation within the state. In terms of contemporary constitutional forms, 'abstract monists' might be associated with highly centralised unitary states; 'concrete monism' with a less centralised unitary state; 'pluralism' either with a decentralised unitary state or a federation; and 'dualists' with federation or even confederation. The dividing lines between these concepts are by no means clear-cut. This is because these concepts relate to the philosophical and sociological underpinnings of the state. They do not specifically prescribe a constitutional form.

In interpreting these concepts further, in terms of a monist view of society, the idea of sovereign authorities within a state would not be acceptable, either to the abstract monist or to the concrete monist. Nor would a federal constitutional form (as defined in chapter 2 above) satisfy either. By contrast, a pluralist view of society would be accommodative of such a federal constitutional form, and a pluralist might accept a unitary state in which autonomous entities were accommodated.

The monistic state as an historical phenomenon can be dated from about the tenth century B.C., whereas the notion of the unitary constitutional form and state is of more recent origin. The notion of the centralised unitary state

has thus, from about the early nineteenth century, become recognised as the organising structure for a monistic conception of society.

The thoughts of selected classical and modern philosophers who may be labelled as monists, as well as one modern pluralist, will now briefly be referred to.

3.4 MONIST AND PLURALIST PHILOSOPHERS

3.4.1 Aristotle

One of the earliest references in the literature to monism appears in Aristotle's *The Politics*, written in the third century B.C. In his opening paragraph, Aristotle notes:

Our own observation tells us that every state is an association of persons formed with a view to some good purpose. I say 'good' because in their actions all men do in fact aim at what they think good. Clearly then, as all associations aim at some good, that one which is supreme and embraces all others will have also as its aim the supreme good. That is the association which we call the State ... (Aristotle 1962, translation:25).

In another reference, to law and sovereignty, Aristotle maintains,

laws rightly framed ought to be sovereign, also that officials of government, whether individually or in committee, have sovereign power to act in all those various matters about which the laws cannot possibly give detailed guidance; for it is never easy to

frame general regulations covering every particular (1962:126).

The central authority in a state, in his view, should not be inhibited in any way from pursuing its goals. According to this view, authorities sovereign in certain matters would not be tolerated within the Greek city state of his time: devolution of power in a federal state would not be acceptable to him.

3.4.2 Machiavelli

Niccolò Machiavelli completed the writing of the *Prince* in the year 1513, at a time when his native Italy was hopelessly divided. He desired a strong state capable of imposing its authority on a divided Italy. In his advice to princes or political leaders of the time, Machiavelli says that those who build their power on the people, winning their general allegiance, need not despair in adversity. However, principalities usually undergo crises during a transition from limited power to absolutism. Princes accepting absolutist rule usually rule directly or through magistrates. In times of adversity, these magistrates are able to depose the prince, either by positive action or by refusing to obey him. When the danger comes, the prince has little time to seize absolute authority. Therefore, Machiavelli claims, the prince must devise ways in which to ensure that his citizens are at all times and in all circumstances dependent upon him and on his authority (1961:70-71).

Machiavelli's belief is in strong centralised rule and implicit in his thinking is that there should be no legal constraints, that is, constitutional constraints, on the exercise of the power and authority of the ruler. An absolutist ruler could then only function in a unitary state.

3.4.3 Bodin

In the year 1576, Jean Bodin, a French citizen, published the *Six livres de la république* (*The Six Books of the Commonwealth*), a work which was occasioned by the French civil wars, and was written with the avowed purpose of strengthening the king (Sabine 1937:399). Royal power was seen as the mainstay of peace and order and Bodin sought to raise the king, as the centre of national unity, above all religious sects and political parties. Bodin's thinking, which represented a move toward strong government, was one of the first detailed expositions of the notion of sovereignty.

The Six Books of the Commonwealth achieved a great reputation in its day, as it took the idea of sovereign power out of the limbo of theology in which the theory of divine right had placed it. By so doing, it led to both an analysis of sovereignty and its inclusion in constitutional theory (Sabine 1937:399). The relationship between sovereignty and divine right is discussed below. Prior to the writings of Bodin, France had been torn apart by religious conflicts. Bodin refers extensively to these in an attempt to resolve them. He also refers to 'princes' and sometimes 'kings', who were the leaders or rulers in the state of his time. Bodin saw the sovereign princes of his day as creations of God who had to be revered and respected, and accorded due honour. Those who condemned their sovereign or prince, condemned God, which Bodin considered inconceivable.

Sovereignty, according to Bodin, was the 'absolute and perpetual power vested in a commonwealth' (Bodin 1576:25). A commonwealth, he considered to be synonymous with a state which could be either a monarchy, aristocracy or democracy. Sovereignty was perpetual in that it could be conferred either on

a person or a group of persons for a period of time by a prince. Perpetual authority, according to Bodin, lasted for the lifetime of him who exercised it. However, sovereignty awarded to a prince with conditions attached was neither properly sovereign nor absolute. A sovereign could not be subject to the commands of another. A prince, in Bodin's view, was also above the law and could not be bound by his own laws. Sovereign princes were, moreover, not bound to keep the laws of their predecessors. If they were so bound, they were not, properly speaking, sovereign (Bodin 1576:30-31). Bodin was thus in favour of absolutist rulers. As regards what might be termed the decentralisation or devolution of power to lesser authorities or 'Estates', Bodin says that it is erroneous to maintain that, 'the authority of the Estates is superior to that of the prince. Such doctrines serve only to encourage subjects to resist their sovereign rulers' (Bodin 1576:31). Lesser authorities could thus be seen as arenas for non-compliance with absolutist rulers.

Bodin does allow room for the existence of 'Estates', but says that they should in no way qualify or diminish the sovereignty of a king. Bodin can therefore be labelled as a 'concrete monist'. The principal mark of sovereign majesty and absolute power, according to Bodin, 'is the right to impose laws generally on all subjects regardless of their consent ...' (Bodin 1576:32).

Four attributes of a sovereign prince are listed by Bodin. First, he should have the power to make law binding on all his subjects without the consent of any superior, equal or inferior being necessary. Secondly, he should be able to declare peace and war with neighbouring states. Thirdly, an attribute of sovereignty is the power to institute the great offices of state (government). This latter attribute refers to the ability of the sovereign to appoint high officials of state (government), and to authorise as well as to

confirm appointments made by lower officials acting in terms of delegated powers. Finally, a prince should be the last resort of appeal from all courts. If, in the last instance, his subordinates could not appeal to him, this would make them sovereign equals with himself (Bodin 1576:43-46).

In a concluding observation on sovereignty, Bodin states,

the rights of sovereignty should never be granted out to a subject, still less to a foreigner, for to do so is to provide a stepping-stone whereby the grantee himself becomes the sovereign (Bodin 1576:49).

In Bodin's view, a well-ordered state must have an indivisible source of authority. Sovereignty must reside in one place. Bodin was clearly firm on the need for a sovereign central government to address the societal problems of his time.

3.4.4 Hobbes

Hobbes, taking up the issue of sovereignty in his *Leviathan*, published in 1651, went further than the earlier philosophers. He argued that sovereignty could not be divided but was located either in one man, or in an assembly of more than one; and into that assembly either every man hath a right to enter, or not every one, but certain men distinguished from the rest (Hobbes 1651:186).

Hobbes continues,

where there is already erected a sovereign power, there can be no other representative of the same people, but only to certain particular ends by the sovereign limited. For that were to erect two sovereigns; and every man to have his person represented by two actors, that by opposing one another, must needs divide that power ... (Hobbes 1651:187).

Hobbes continued, that if people were to live in peace, sovereignty could not be divided. If sovereignty was divided, this would create conditions of war within a state, which was contrary to the end for which the state was intended (Hobbes 1651:187).

It may be deduced that Hobbes would clearly be opposed to federation in which sovereignty was divided in terms of a constitution, since he would see the potential for conflict under this constitutional form.

3.4.5 Rousseau

Rousseau published his *Du Contrat Social (The Social Contract)* in 1762. As an alternative to his notion of mankind's continuing in a state of nature, Rousseau held that only by coming together and pooling their strength could human beings maintain themselves. They must develop some sort of central direction:

'Some form of association must be found as a result of which the whole strength of the community will be enlisted for the

protection of the person and property of each constituent member ...' (*The Social Contract*, 1762:255).

In elaborating on his notion of the general will, Rousseau says the following,

'each of us contributes to the group his person and the powers which he wields as a person under the supreme direction of the general will and we receive into the body politic each individual as forming an indivisible part of the whole' (*The Social Contract* 1762:257).

A definite emphasis is placed, in Rousseau's thinking, on the need for strong, centralised governments.

3.4.6 Marx

The Communist Manifesto first published by Karl Marx in 1848 became the accepted creed of millions of leaders and followers the world over (Taylor in Marx 1967:7). *The Communist Manifesto* and Marx's subsequent writings have generated a large body of literature refining and interpreting his original writings. This body of literature published under labels like Marxism-Leninism became the orthodoxy in much of the developing world including the African continent (Bauer in Drachkovitch 1966:150).

Although Marx does not refer specifically to constitutions in his *The Communist Manifesto*, he refers to the need for centralisation within the state. Marx argues for the formation of the proletariat into a class, to overthrow what he perceived to be the bourgeoisie supremacy of his time, and

place political power in the hands of the proletariat. The proletariat he further argued, would amongst others, use its political supremacy to centralise all instruments of production in the hands of the state; including credit, communication and transport (Marx 1888:chapt.2). Like the aforementioned authors, Marx in his earliest writing, places a definite premium on centralisation of power within the state.

3.4.7 J.N. Figgis

Writing in 1913, Figgis, an English academic writer, reformulates what might be described as the absolutist doctrine of sovereignty as subscribed to in the literature of his time. Every right in a state is the creation of a single and indivisible sovereign, whether it be a monarch or a legislative assembly:

No prescription, no conscience, no corporate life can be pleaded against its authority, which is without legal limitation. In every state there must be some power entirely above the law ... to talk of rights against it is to talk of nonsense (Hirst 1989:123).

Figgis continues by explaining that in a situation where rights are demanded from the state, that state, 'is in a condition of incipient dissolution and anarchy is already setting in' (Hirst 1989:123). The doctrine of the absolute state is limited in practice. Society is, in fact, comprised of a hierarchy of groups like the family, school, town, county, union and church, which must be restrained from acts of injustice to one another. To achieve this a strong power is necessary for regulating the interaction between such groups (Hirst 1989:124-125). Figgis would therefore not concede that groups other than the

central government be either sovereign or autonomous.

3.4.8 Observations on the above theorists

An attempt has been made above to define monism, and to isolate some of the justifications advanced by selected theorists for the creation of centralised authorities. These justifications are largely philosophical and sociological in nature. As is pointed out by Laski and this observation applies to the theorists above, no theory of the state is ever intelligible save in the context of its time (1948:i).

Some of the common threads in these justifications are as follows: there is a general belief in promoting the common good, which can only be achieved through one body or one association, usually the state (government); the state (government) is considered to be the organising mechanism for bringing society together and for promoting order, minimising conflict and providing for the protection of the citizenry. Arising from this is an important question: How have these thoughts contributed towards the creation of centralised unitary states in the real world? Have they impacted upon constitution makers?

The subsequent Marxist-Leninist literature for example, has had a special appeal to leaders and elites in the former colonies and developing countries. One of the reasons for this appeal was the perceived political and military success of the former Soviet Union which was associated with economic development and central planning, and the widespread belief in the possibilities of engineering in social affairs. Further, Marxism-Leninism implied, as Marx in his own writings did, a concentration of power in the hands of government, thereby being able to control society. The incentive to

attain and retain political power was thereby increased (Bauer in Drachkovitch 1966). The construction of a centralised unitary state was an obvious corollary of this belief.

Moreover, many leaders and leadership elites in the post World-War II period received education in France, the United Kingdom and the United States and came into contact with liberal and Marxist groupings. In France, the influence of the trade union movement and the ideas of Rousseau were particularly important. In the United Kingdom, leaders came into contact with the left wing of the Labour Party and the Communist Party, and in the United States concepts of equality as expressed in the Declaration of Independence and Lincoln's ideas about "government of the people, by the people, and for the people" (Andrain 1965). These ideas are likely to have been contributory factors in the adoption of centralised unitary states in the African context.

3.5 SOVEREIGNTY, NATIONALISM AND THE HISTORICAL EVOLUTION OF THE STATE

There is no definite point in history at which one can say that the unitary state or the centralised unitary state came into being. Some form of recognisable state (as defined in chapter 2) can, however, be identified in the late medieval period, that is in the 1500s. The constitutional state, that is the state in which the operation of government is restrained by law, dates from about the eighteenth century. Coupled to the constitutional state is the notion of constitutionalism, in which the constitution protects the citizen from arbitrary actions of government. Many of the themes embodied in the constitutional state can be traced back for several centuries.

The origins of centralised unitary constitutional forms in contemporary Africa

cannot be understood without reference to the historical evolution of the modern-day nation state and, in particular, to the development of the notions of sovereignty and nationalism. Sovereignty was, in turn, supported and explained by the theories of the 'divine right of kings' and 'absolutism', as will be explained below. As mentioned in chapter 2 above, for a unitary state to exist, sovereignty must be located in a central government or authority. The notion of sovereignty is thus central to the existence of the unitary state.

Camilleri maintains that the history of sovereignty parallels the evolution of the modern state (1992:11). The notion of 'sovereignty' is, according to him,

part of the more general discourse of power whose function is not only to describe political and economic arrangements but to explain and justify them as if they belonged to the natural order of things. Sovereignty in both theory and practice is aimed at establishing order and clarity in an otherwise turbulent and incoherent world. Its historical function has been to act as a 'fundamental source of truth and meaning', to distinguish between order and anarchy, security and danger, identity and difference (1992:11).

The 'more general discourse of power' to which Camilleri refers, includes discussion of the theoretical notions of 'the divine right of kings', the 'absolutist state' and the 'constitutional state'. These notions are discussed below. The practice aimed at 'establishing order' was in part explored during the discussion of the theorists above. In responding to the issues of their

time and to periods of upheaval, they pleaded for something supreme in their respective states. What might be referred to as monistic sovereignty had a definite role to play in such circumstances.

In order to understand the notion of sovereignty, one needs to turn to historical Europe, which is the cradle of the modern sovereign state.

3.5.1 Historical Europe

From about the ninth and tenth centuries, the Roman Empire began to disintegrate and this ushered in the medieval period in Europe and the system of feudalism. The essential feature of feudalism was the division of land into small units under the control of lords or barons. The feudal system consisted of a maze of small kingdoms, principalities, duchies, quasi-autonomous institutions and churches. No clear demarcation between the domestic and external spheres of organisation, no sharp dividing line between 'public territories' and 'private estates' existed during the feudal era (Camilleri 1992:12).

During the Medieval period, however, both rulers and ruled were subject to a universal legal order which reflected and derived its authority from the law of God. The church provided, 'the feudal order with an overarching, organisational and moral framework transcending both legal and political boundaries' (Camilleri 1992:12).

By the end of the fifteenth century, Europe was comprised of some 500 more or less independent political units, somewhat akin to Africa at the end of the nineteenth century. At about this time, the old feudal order was in visible

decline. With the growth of trade and the manufacturing classes, the introduction of royal taxes, and the exclusion of certain independent political entities in the Italian peninsula, power in Europe became centralised in the monarchies. These monarchies developed central institutions that made and enforced law, employed educated and competent civil servants, hired armies of mercenary troops and rationalised the collection of taxes. Some of the theorists of the time responded to the need to strengthen monarchies, while at the same time removing divisions within their respective societies. The notions of the 'divine right of kings', and the 'absolutist state', which overlap one another, were philosophical responses to the need for stronger and more centralised states.

Returning to the evolution of the historical state, Camilleri mentions several factors which contributed to the trend towards centralisation. The achievements of the Renaissance in art, literature and philosophy were particularly important in the secularisation of life and the concomitant decline in the spiritual and temporal authority of the church. Political power thus became concentrated in the hands of the European monarchies. Moreover, the revival of Roman Law,

corresponded to the needs of the absolutist state and the spread of capitalist relations in towns and country. The strong attachment of Roman civil law to the notion of absolute private property provided the legal basis in Renaissance Europe for the growth of private commodity production and exchange in both agriculture and manufacturing. Similarly, though somewhat contradictorily, the Roman conception of absolute empirical power (enshrined in public law) became a potent weapon for the

administrative centralization and territorial integration of the European monarchies (Camilleri 1992:13).

Camilleri further maintains that with the Reformation and Counter-Reformation and the subsequent wars of religion, the emerging authority of the secular state appeared to be the most effective remedy for the widespread religious and political disorder that had engulfed Europe (1992:13-14).

Batchelder and Freudenberg argue that the innovations in gunpowder weapons initiated the move towards more centralised bureaucratic structures in Europe. Bureaucratic centralisation they argue, was an efficient response to providing a logistical system for a defensive strategy for the centralised coordination of the infantry of the time (1983:11-12).

3.5.2 Sovereignty

It was in the fifteenth and sixteenth centuries that the idea of sovereignty gained ascendancy. At this time sovereignty was thought of as the supreme authority of a person, monarch or emperor. As the state at the end of the Medieval period became more integrated, so the notion of sovereignty became more inclusive. This understanding of sovereignty gave way to the notions of the 'divine right of kings' and 'absolutism' and 'absolute sovereignty'.

3.5.3 The Divine Right of Kings

J.N. Figgis refers in 1896, to the 'Divine Right of Kings', a theory of politics which prevailed throughout the sixteenth and seventeenth centuries. Arising out of a reaction to papal pretensions to power, this theory had a

very definite role to perform in the development of society at the time. Monarchy was, according to this theologically based theory, a divinely ordained institution, and kings were accountable to God alone. Sovereignty was vested in the king, whose power was incapable of legal limitation. All constitutional forms and assemblies existed entirely at his pleasure. This theory of the Divine Right of Kings was an early expression of the idea of sovereignty, which was given content by, for example, Bodin and Hobbes (Figgis, 1896). It embodied the idea of centralised sovereignty, referring essentially to the supremacy of a single central authority.

In time the divisions between religion and politics became less distinct, while the acceptance of monarchy was, in fact, an acceptance of some form of central authority and rule. The acceptance of a centralised sovereign gave way to the notion of absolutism as defined below. Absolutist theory laid the foundation for the later idea of constitutionalism and constitutional theory, which was first and foremost a theory of limitation. The idea of constitutionalism underpins much of the thought concerning the role of the state that continues into the present century.

3.5.4 The absolutist state

The absolutist state replaced the system of feudal domination which had relied upon the institution of serfdom as a mechanism for fusing economic exploitation and politico-legal coercion at the molecular level of the village. The apparatus of legal and political coercion was shifted upwards towards a centralised, militarised summit, and henceforth referred to as the 'absolutist state' (Camilleri 1992:14).

In the absolutist state,

the rulers claim absolute, or total, power by virtue of personal attributes, the authority or the nature of the laws they interpret and apply, religious authority, the recognition of some form of 'necessity' ... rulers must reject any external limitation on their powers, such as custom, ... an autonomous constitution which stands above the laws of the ruler, or claims by other social organisations (e.g. the churches, trade unions), to possess degrees of power in their own spheres (Roberts 1971:1A).

The major characteristic of the absolutist state was thus its centralisation of power, together with the absence of constitutional restraints on the exercise of that power.

Consequently, political power in the absolutist state was held in the hands of a monarch or king rather than local political organisations. In the earlier medieval state, this form of local political organisation was an inevitable consequence of limitations on the means of communication. A large political territory was not governable except by a kind of federalism that left to local units a large measure of independence (Sabine 1937:332). The move towards the absolutist state was facilitated by the extension of the ease of communication which became incompatible with local monopolisation and control. Larger profits could be made by the merchant who had access to every market. Standardisation of prices, quality of goods and conditions of employment, for example, had to be undertaken by governments larger than the medieval municipality. The interests of the merchant were thus on the side of strong government in the person of a king.

By the early sixteenth century, absolute monarchy was rapidly becoming the prevailing type of government in Europe. One of the earliest commentaries on the absolutist state was that of Machiavelli. Writing in 1513, he offered his commentary on the five Italian city states of his time. The state for Machiavelli was an organisation of force which ensured security of persons and property. Its success, given the dangers posed by internal corruption and external enemies, ultimately depended on 'a strong hand and a clear intelligence at the helm'. Only the shrewd and resourceful 'prince' could bring to fruition the aspirations of his people, and give expression to the moral and civic character of society. Machiavelli had made great strides towards the notion of the 'omnipotent legislator', yet he fell short of a general theory of political absolutism (Camilleri 1992:16).

By the end of the seventeenth century, most of the dynastic states of Europe had developed centralised legal and administrative systems over clearly defined territories. The absolutist state therefore became responsible for a territorial dimension of society. Increasingly it took over the defence of its territory and extended itself to economic functions. Sovereignty also acquired an external dimension. International relations were conducted between states displaying territorial integrity, legal equality, and sovereignty. The theory of sovereignty became an important element of absolutist theory, which in itself has religious and other relationships with constitutionalism, like despotic rule, dictatorship and personal rule.

The absolutist theory of the state was most vigorously developed by the French and, in particular, Bodin, referred to above. In the nineteenth century the state became distinguished from other institutions by its supreme coercive power. It acquired legal sovereignty which meant that it could enforce law

through the exercise of this power, or through the threat to use it. By the second half of the nineteenth century, most countries had written constitutions, providing for some form of representative institution and thereby limiting the previous absolutist powers of governments. The locus of sovereignty became proscribed by a written document.

In the twentieth century, numerous critics have questioned the explanatory value of the concept of sovereignty (Camilleri 1992:31). One of the arguments surrounding the question of sovereignty is whether the fragmentation of political power is 'antithetical to the internal meaning of sovereignty, with its emphasis on the existence of a central power in every state' (Camilleri 1992:31). Can one speak in purist terms of a single sovereign body or divided sovereignty in the contemporary state? Authority is decentralised to lesser and greater degrees in both unitary and federal systems of government, as was pointed out in chapter 2 above.

The answer to this question lies in whether one adopts a monist or pluralist view of society. Further, in determining whether sovereignty is divided, one needs to look at the realities of the state in particular. If authority is decentralised, one must determine whether it is entrenched by means of special legislative provisions. If so, the state fulfils one of the criteria arrived at in chapter 2 for being classified as a federation.

3.5.5 Nationalism

The ideal of nationalism has been a driving force in Europe ever since the French Revolution at the end of the eighteenth century. It has overwhelmed some of the better reasoned arguments advanced by theorists for a centralised

state. Essentially nationalism in Europe embodied a belief that all those who shared a common history and culture should be autonomous, united and distinct in their respective states. People shared a national ideal that they were part of one of many distinctive nations of the world. Internal to the state, nationalism also involved solidarity between sometimes diverse groups for the securing of certain political ideals, such as freedom from foreign rule and sovereignty. Since complete freedom to act and undivided sovereignty are incompatible with federation, nationalists often preferred to set up states of their own in which they would have undivided sovereignty. In Europe, the unitary state has fulfilled this ideal (Smith 1979:3-4). A similar ideal prevailed in Africa before independence. This will be referred to in chapter 4 below.

3.6 THEORY DEFINED AS THE CONSUMMATION OF EXPLANATION

3.6.1 Shils

Shils (1982) provides an explanation for the effectiveness of authority and the maintenance of order in society. His book, *The Constitution of Society*, refers to the sociological composition or make up of society rather than to legal institutions. Much of his thinking deals with the relationship between what he terms the 'centre' and the 'periphery' of society. Since Shils (1982) deals at great length with the constitution of society, reference will only be made to some of the main points in his explanation.

While studying various aspects of Western, Asian, and African societies, Shils developed a number of his theoretical observations. He takes as his departure point that,

a good society is one without conflict Rulers have almost always wished their realms to be free of conflict; they attempt to prevent or to suppress those who could initiate active conflict against them Conflict is generally regarded as something made necessary by ill-will, misfortune, injustice, undesirable scarcity, or historical inevitability. In contrast with this, a unified society, one in which conflict has been eliminated, is generally thought to be a good thing (1982:3).

Shils continues that the Reformation settlement, which declared that the religion of the ruler should also be the religion of his subjects, was one sign of the desire of rulers not merely to gain the submission of their subjects, but also to integrate them into a single society through the uniformity of beliefs. When nationality became an object of passionate devotion and when its realisation and protection became a criterion for defining the boundaries and legitimacy of states and societies, rulers found what was to them an almost ideal basis for the integration of the societies over which they held dominion. In the late nineteenth and early twentieth centuries, the rulers of most advanced countries tended to integrate their societies through nationally comprehensive legislation and, by the penetration of their authority into every part of their society, through the expansion of administration and policy up to the outer limits of their borders (1982:4).

Since the end of World War II, the problem of the integration of societies has become an urgent practical concern in much of Asia and Africa. Shils states that:

Colonial governments for most of their careers sought to do little other than to maintain internal peace and to maintain their own authority. After independence, the new indigenous governments attempted to do more. They have attempted to 'develop' their societies ... they have attempted to arouse their populations into a sense of the urgency of national development. In the course of these efforts, they have been made more aware that their societies are riddled with traditional divisions into castes, linguistic and ethnic groups, tribes and nationalities, religious communities, and locally bounded societies which are distrustful of and in conflict with each other and resistant to the central governmental authority of their newly sovereign states. They have believed themselves to be repeatedly in danger of disintegration ... (Shils 1982:6).

These new states have contained centrifugal forces which have served to weaken central governments. The concern then for leaders is to hold the diverse parts of society together. They have suffered from crises of national integration. All rulers, whether of a totalitarian, authoritarian or liberal persuasion, seek the integration of their societies, though admittedly, to different degrees.

The term 'integration' is used frequently by Shils (1982), who defines it as,

the structural sum of the parts; it is what makes the whole of society more than the arithmetic sum of its parts. We are concerned, then, with the structures and processes through which the ensemble of the diverse parts of a society - activities,

beliefs, relations and institutions - are held together ...
(1982:9).

Integration is an important problem for leaders of new states. Populations in new states are generally not formed into an integrated society. If one extends Shils' arguments, centralised unitary states can be utilised by leaders as integration mechanisms.

The main factors, according to Shils, which establish and maintain a society are a central authority, consensus, and territorial boundedness. Every society, besides having a centre, has a periphery. According to Shils:

The centre consists of those institutions (and roles) which exercise authority - whether it be economic, governmental, political, military - and of those which create and diffuse cultural symbols - religious, literary, etc. - through churches, schools, publishing houses, etc. The periphery consists of those strata or sectors of the society which are the recipients of commands and of beliefs which do not themselves create or cause to be diffused, and of those who are lower in the distribution or allocation of rewards, dignities, facilities, etc. (1982:59).

In some societies there is a more intense relationship between the centre and the periphery than in others. However, in more recent times, the periphery has acquired some of the fundamental qualities once thought to be the monopoly of the centre. One major consequence of this change in the culture of modern societies has been decolonisation and the growth of nationalist movements in

the colonial territories, and the resultant establishment of many new states in Asia and Africa.

Integration, according to Shils, occurs in two directions, vertically and horizontally:

A society is vertically integrated in a hierarchy of power and authority and a status order; it is horizontally integrated by the unity of the elites of the various sectors of life or subsystems of the society The intensity of vertical integration differs among societies. Federations are less intensely integrated vertically than unitary regimes ... (1982:72-73).

3.6.2 Concluding remarks

Although Shils does not use the concept, vertical integration can be considered as a support for the centralisation of institutions and power. The greater the degree of integration of structures, the greater the degree of centralisation of power. The centralisation of power, however, does not necessarily coincide with the integration of structures. An individual leader, for example, might wield a great deal of power, but all structures under his control may not be centralised.

Like the classical philosophers referred to above, Shils explains the centralisation process in terms of the need to minimise conflict within a society. Unlike the classical theorists, he writes of the need to integrate society and the notion of nationality. He also introduces the idea of

development, which has led to the strengthening of the centre in many countries. These themes are echoed by a number of authors and spelled out in the literature on nation-building in Africa referred to in chapter 4.

3.7. THEORY DEFINED AS A CONCEPTUAL SCHEME

An example of theory of this nature is a study by Etzioni (1965), which he entitles, *Political Unification. A Comparative Study of Leaders and Forces*. Although this study is categorised under the heading of a theory, Etzioni himself considers it to be a paradigm which he says is more than

a perspective but less than a theory. It provides a set of interrelated questions, but no account of validated propositions. It provides a 'language', a net of variables, but it does not specify the relationships among those variables. It is less vague than a mere perspective, providing a systematic, specific, and logically exhaustive set of *foci* for research and speculation. A paradigm is often a stage on the way from an old perspective to a new theory (1965:2).

Etzioni's paradigm,

provides a set of dimensions for the study of a process, specifically one that affects the relations among units, as contrasted to their internal structure We are particularly interested in the unification of already existing nations, but the paradigm applies also to the development of other

unifications, such as the evolution of national bonds among tribes, villages, or feudal fiefs (1965:3).

It is the latter internal unification process which took place within colonial boundaries; and the end result of that process, resulting in the creation of centralised constitutional unitary states, which is the subject of this thesis.

Etzioni's paradigm will therefore be used and described as a 'conceptual scheme', for the three case studies under analysis, dealing with the adoption of centralised unitary constitutions in Botswana, Zimbabwe and Namibia, in chapters 5, 6 and 7, below. The adoption of the centralised unitary constitution was, in each instance, the end result of a particular process which will be described and explained in each case study.

Etzioni says that four major questions can be asked about every process contributing towards 'unity' within a state or a 'union' between states. The four questions are as follows:

Under what conditions is it initiated? What forces direct its development? What path does it take? And what is the state of the system affected by the process once it is terminated? (Etzioni 1965:14).

Each of these questions is suggestive of a progression in the development of unitary states and federations. This progression can be viewed in terms of four stages as outlined by Etzioni (1965:15). Each of these is discussed individually and, for the purposes of this thesis, modified where necessary

to fit the circumstances of the African continent and the case studies.

Etzioni (1965:14) takes into consideration the interplay between the independent variables and the dependent variable, which drives the progression towards unification or union that is unitary and federal states. The dependent variable for the purposes of this thesis is an end result, the creation of the centralised constitutional unitary state. There are a number of independent variables or factors determining this progression, for example, colonisation processes, the role of ideology, the role of independence movements, the existence of unitarist and federalist political cultures and geographical factors.

These variables or factors are referred to in this thesis as centripetal or centrifugal forces. Although referred to, for example, by Ibele (1971:128) in relation to democratic systems, they are understood here to refer to forces contributing towards the centralisation of power (centripetal) in a unitary state, or those contributing towards the decentralisation of power (centrifugal) in a decentralised unitary state, federation or partitioned state. It is hypothesised that if the centripetal forces within a colonial African state are stronger than the centrifugal forces, then that state becomes a centralised unitary state or a centralised constitutional unitary state.

It is also argued in support of the idea of a progression from one stage to the next, is that institutions evolve into their present forms from recognisably similar structures that came into being at some time in the past to achieve a specific purpose. Institutions in terms of this argument, are the 'carriers of history' (David 1994:205). Following Etzioni's conceptual scheme,

the history from the one stage of the unification process carries through to the next.

The unification process in the African colony may be conceptualised in terms of four stages: 1) the pre-centralised stage; 2) the centralisation stage; 3) the take-off stage; and 4) the termination stage.

3.7.1 The pre-centralised stage

There are a number of questions which can be asked about the nature of the pre-centralised African colony in order to determine the factors which contributed towards its later centralisation. What was the purpose or motivation for the early colonisation of the territory? What was the nature of the early colony, that is, to what degree was the political culture fragmented? What resources were available for colonising the territory? To what degree did the geographic size of the territory impact upon the establishment of administrative and executive structures? By raising these and other questions, the conditions might be recreated which laid the foundations for the beginning of the centralisation process.

3.7.2 The centralisation stage

According to Etzioni:

Socio-economic processes like unification do not proceed in a trial and error fashion. Once initiated they tend to follow one of a limited number of patterns Which pattern they follow is in part determined by the kind of integrating power that various

elites exercise and that the evolving union commands (1965:37).

In launching a unification endeavour, one must have a clear conception of the integrating powers which exist. They may include coercive power like a military force, utilitarian powers like economic sanctions, or powers like propaganda and unification movements.

When studying a process or the formation of a polity, social scientists speak of the initiation period. This period may coincide, for example, with the granting of a charter, or the establishment of movements like political parties. An important consideration under this heading is the role of elites in the centralisation process. An elite 'refers to a unit that devotes a comparatively high proportion of its assets to guiding a process and leading other units to support it' (Etzioni 1965:45). An elite may be a person, a group of persons, or a government. Under this heading, Etzioni also refers to internalisation which is 'the process in which control of a system is taken over by member-elites from external elite-units' (1965:48) who thus guide the process.

3.7.3 *The take-off stage*

'Take-off' occurs when a process has accumulated enough momentum to continue on its own. The process of unification and centralisation is reinforced by factors like historical precedent, external factors such as international opinion, and internal ones such as the opinions of elites and an evolving political culture. The determinants of take-off are varied. Centralisation of one sector can result in centralisation of another. The scope of the central authority begins to increase and citizens identify with one central authority.

Once the centralisation process has taken off, the question arises as to how much centralisation is necessary to achieve a stable state. A further question which arises is, in what order are the different sectors of the particular society centralised and which sectors need to be centralised for a stable state. Through the posing of these and other questions, the structure of the centralised unitary state begins to be debated.

3.7.4 *The termination stage*

The termination stage is reached when a final centralised unitary constitution is enacted and levels of centralisation and decentralisation remain basically unchanged for a considerable period of time. At this stage, the scope of state authority reaches to all political communities, although it might not exercise control over all those communities. The cut-off point for the purposes of this thesis is the enactment of a centralised unitary constitution in the three case studies analysed.

3.7.5 A critique of Etzioni's conceptual scheme

A fifth and sixth stage could be added to the conceptual scheme (which is one of its weaknesses) to accommodate the three post-independence stages of Mawhood (1989) and Chazan et al. (1992) as set out in chapter 1. It could be postulated that unitary states reach a degree of centralisation that no longer serves the interests of its citizenry and good governance. States then begin to reassess their centralised unitary constitutional forms and opt for degrees of decentralisation of power or even federal, partition or confederal constitutional forms. It is not the main purpose of this thesis to analyse the

post-independence evolution of the African state in any great detail¹. Despite the aforementioned weakness of Etzioni's 'conceptual scheme', it will be utilised in this thesis as it is the most suitable available for organising and explaining the evolution of the centralised unitary state in the case studies referred to below.

3.8 CONCLUSION

Many circumstantial factors existed in Africa similar to those operating at the time of the pre-modern and modern European state, which produced similar arguments in favour of a centralised constitutional state (government). Some of these arguments will be analysed in the next chapter.

There are a number of parallels that can be drawn between the evolution of the European state and the former Africa colony. Europe in the Medieval period was a highly fragmented continent consisting of numerous small polities, as was the case on the African continent in the last quarter of the nineteenth century, when the continent was formally colonised. Internal factors, such as better methods of communication, resulted in increased centralisation and the evolution of the constitutional state. Centralisation was, moreover, necessary to do away with the evils of feudalism. Centralisation in the African context was necessary to destroy divisions along tribal and ethnic lines.

In Africa, the centralisation process was initiated by the imposition of colonial rule. The practical realities of administering large territories,

¹. The extension of Etzioni's 'conceptual scheme' to accommodate the post-independence period in the African state, requires further refinement. The aforesaid is a preliminary view of how the 'conceptual scheme' might be extended.

often with limited resources, and the need to consolidate power within those territories, as well as to ensure peace, contributed towards the centralisation of decision-making structures within the state.

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Chapter 4

SURVEY OF SELECTED LITERATURE SOURCES ON THE ORIGINS OF THE CENTRALISED UNITARY STATE IN AFRICA

4.1 INTRODUCTION

The aims of this chapter are: first, to describe the specific origins of written constitutions, more particularly those of British origin as referred to in the literature; and secondly, to survey some of the literature explaining the creation of centralised unitary state in Africa. This chapter will then provide some of the contextual explanation for the origins of centralised unitary constitutions as described and explained in the case studies.

4.2 ORIGINS OF WRITTEN CONSTITUTIONS

In chapter 1, reference was made to original and derivative constitutions, and autochthonous and allochthonous constitutions: constitutions originating either inside or outside a country, or both inside and outside a country. Further, it was mentioned in chapter 1 that written constitutions are of a political-legal nature, and are determined by a number of factors, like ideologies and culture, a country's history and existing political and constitutional order, and international criteria. Additional factors include historical precedents, philosophical traditions and ideology, reports of constitutional commissions and committees of experts, resolutions passed by political parties and movements, the influence of elites and strong personalities, socio-economic factors, interest groups and conflict situations. The nature of African society and the challenges facing African

leaders at the time of independence have also been important factors in determining the type of constitutional form adopted.

These and others may be expressed in constitutional terms through the feelings or will of a population; or through the impact that members of a parliament, a constituent assembly, government department or institution might have on the drafting of a document; or through experts drawn in to participate in the drafting of a constitutional document.

It is seldom possible to pin-point one specific input responsible for a set of constitutional principles. Different combinations of criteria generally impact on the final content of a written constitution. In order to explain why a particular constitutional design evolves, one has to analyse a number of factors involved in a particular case. At certain stages in the historical development of a continent or country, some inputs might be more important than others.

Much of the literature fails to explain the exact factors determining the adoption of centralised unitary constitutional forms by specific African states, it describes the circumstantial factors, and intellectual and ideological climates in which the constitution-drafting process took place.

4.2.1 Theoretical perspectives

There are a number of theoretical perspectives, as distinct from theories, under which the centralised unitary state in the African context may be studied and explained. The literature seldom focuses specifically on the unitary state itself. Many of the theoretical perspectives in the literature

are suggestive of the origins and role for the centralised unitary constitutional form in Africa. For example, Welch (1966), spells out efforts to create suprastate political unions in West Africa; Barrows (1976) and Shils (1982) stress centre-periphery relationships; Shivji (1991), the state and constitutionalism; Stark (1986) and Mawhood (1989) write on 'state formation' in Africa; Wunsch and Glowu (1990) and Deutsch and Foltz (1963) stress nation-building, national integration, state structures and political systems; Glickman writes on state-centrism and ideology (Ergas, 1987); Neuberger (1986) writes on national self-determination; Rivkin (1963) stresses environmental determinism; Selassie (1974) stresses neo-presidentialism; Coleman and Rosberg (1970) stress political parties and national integration; Markovitz (1977) stresses class; and Zolberg (1966), the function of ideology in the centralisation process and the creation of the unitary state. No holistic theory on the creation of the centralised constitutional unitary state exists. Embedded within these theoretical perspectives are occasional references to the unitary state in Africa. Very little recognition is given in this body of literature to the centralised constitutional unitary form as an important organising principle within the state.

The approach in this chapter is eclectic and references are made to selected theoretical perspectives which attempt directly or indirectly to explain the creation of centralised unitary states in Africa. The theory discussed in this context will be that arising out of the thoughts, conjectures and ideas of selected academics and African leaders writing specifically on Africa. By studying this theory, many of the inputs into the constitution-making processes will be captured.

4.3 LITERATURE

4.3.1 Literature categories

The literature on the constitution-drafting processes in Africa can be classified as either published or unpublished. This chapter is concerned with the survey of the published literature, that is material derived from sources such as books, journal articles and the resolutions of international institutions. The case studies in chapters 5, 6 and 7 will be based upon both published and unpublished sources.

4.3.2 Published sources

The published literature relating to the adoption of centralised unitary constitutions can be divided into three broad categories:

- First, texts on early imperial constitutional policy and African constitutions;
- secondly, a body of academic literature appearing from the 1960s largely suggestive of the factors contributing to the unitary state and the pre-independence centralisation process in Africa; and
- thirdly, a body of literature reporting the writings and speeches of former African leaders suggestive of the factors contributing to the adoption of centralised unitary constitutions, and dealing with resolutions passed by international institutions on the subject of African unity and Pan-Africanism.

4.4 EARLY IMPERIAL CONSTITUTIONAL TEXTS

4.4.1 The Durham Report

The Durham report is one of the most thorough analyses of the advantages and disadvantages of unitary and federal constitutional models for developing countries. The Report itself and its impact on British colonial constitutional development will thus be described in fairly great detail, since this thesis is mainly concerned with territories formerly under British rule. Namibia was indirectly under British rule until the 1930s, when South Africa became legally independent from Britain.

In the year 1838 the Earl of Durham, John George (later Lord Durham), was appointed by the government of the United Kingdom as High Commissioner and Governor-General,

to inquire into, and, as far as may have been possible, to adjust all questions depending in the said Provinces of *Lower* and *Upper Canada*, or either of them, respecting the Form and Administration of the Civil Government thereof respectively (Coupland 1945:4).

The Report, which was produced as a result of this enquiry, became known as the 'Durham Report' and was published on 11 February 1839. This Report is of significance here because it influenced the later development of British Commonwealth constitutional law and philosophy, although the degree to which it did so has been debated.

The political and social issues which Lord Durham was called upon to address

were those of 'rebellion, foreign invasion, and utter exhaustion and depopulation' (Coupland 1945:140). Durham made two main recommendations in his Report. In his first recommendation he advocated the replacement of the existing system of representative government with responsible government. The second main recommendation, which is of particular interest, concerned what he referred to as the 'legislative union' of Upper and Lower Canada.

Underlying the issues confronting the populations of the two provinces were relationships between the majority English population and the minority French population. In his Report, Durham described this conflict as follows:

I found two nations warring in the bosom of a single state: I found a struggle, not of principles but of races; and I perceived that it would be idle to attempt any amelioration of laws or institutions until we could first succeed in terminating the deadly animosity that now separates the inhabitants of Lower Canada into the hostile divisions of French and English (Coupland 1945:15).

The population of Upper Canada was estimated at 400 000, the English inhabitants of Lower Canada at 150 000, and the French at 450 000.

With regard to constitutional reform, Durham stated:

I rely on the efficacy of reform in the constitutional system by which the Colonies are governed for the removal of every abuse in their administration which defective institutions have engendered. If a system can be devised which shall lay in these

countries the foundation of an efficient and popular government, ensure harmony, in place of collision, between the various powers of the State, and bring the influence of a vigorous public opinion to bear on every detail of public affairs, we may rely on sufficient remedies being found for the present vices of the administrative system (Coupland 1945:140).

Lord Durham placed great faith in the reform of the constitutional form existing at the time to address the political and social evils confronting Lower Canada.

In order to remedy the problems experienced by Lower Canada, he proposed a fusion of the government with one or more of the surrounding provinces. Durham continued: 'I find in union [sic] the only means of remedying at once and completely the two prominent causes of their present unsatisfactory condition' (Coupland 1945:159). He proposed two kinds of union - federal and legislative. Although the concept, legislative union, was not actually referred to by him, it can, according to Coupland, be equated with centralised unitary government (1945:1vi). 'Union' is taken by Durham to refer also to 'unity', that is the process involved in the creation of a unitary state. Durham produced a number of justifications for and against one or the other form of union - federation or a unitary state.

In Durham's view, a federal union would result in 'a weak and rather cumbrous government'. He reports in the first person,

a Colonial Federation must have, in fact, little legitimate authority or business, the greater part of the ordinary functions

falling within the scope of the imperial legislature and executive I became aware also of great practical difficulties in any plan of federal government, particularly those that must arise in the management of general revenues, which would in such a plan have to be again distributed among the Provinces (Coupland 1945:159-160).

Considering the feeling of the French population at the time, Lord Durham believed that any power which they might possess in a federal union, had the potential to be used against the British government (Coupland 1945:160). His response to this problem was to propose that the Province be subjected 'to the vigorous rule of an English majority' (Coupland 1945:161) and he advocated a policy of assimilation to address the problem of the relations between English and French Canadians.

Lord Durham mentioned further factors justifying a unitary system of government for the two Provinces. He said that:

The union of the two Provinces would secure to Upper Canada the present great objects of its desire. All disputes as to the division or amount of the revenue would cease. The surplus revenue of Lower Canada would supply the deficiency of that part of the upper Province The completion of the projected and necessary line of public works would be promoted by such a union. The access to the sea would be secured to Upper Canada. The saving of public money, which would be ensured by the union of various establishments in the two Provinces, would supply the means of conducting the general Government on a more efficient

scale than it [had] yet been carried on. And the responsibility of the executive would be secured by the increased weight which the representative body of the United Province would bring to bear on the Imperial Government and Legislature (Coupland 1945:162-163).

Although Durham was primarily concerned with the problems of Upper and Lower Canada and their union, he questioned whether union of all the British provinces of North America could not obtain similar advantages. Such a union, Durham believed, could settle the question of 'races', it could enable all the Canadian provinces to co-operate for common purposes, and above all, it could form a great and powerful people who possessed the means of securing good and responsible government for themselves (Coupland 1945:163).

Further advantages of a legislative union were advanced by Durham: union of the North American Provinces, he said, would in effect counter-balance whatever tendencies existed towards separation by individual provinces (Coupland 1945:164), and further, to prevent the extension of American influence, this could be done by promoting a North American (Canadian) nationalism which would elevate small and unimportant communities into a national society of greater importance (Coupland 1945:165).

Two further advantages of a legislative union were mentioned by Durham. They were, first, that it would,

elevate and gratify the hopes of able and aspiring men. They would no longer look with envy and wonder at the great arena of the bordering federation [the United States of America], but see

the means of satisfying every legitimate ambition in the high offices of the Judicature and Executive Government of their own Union (Coupland 1945:166).

Secondly, on a more practical level, Durham believed that in a legislative union, government departments would gain greatly both in economy and efficiency, by being placed under a common management (Coupland 1945:168).

4.4.2 The impact and significance of the Report

Coupland considers the historical impact of the Report on British Commonwealth constitutional development to have been its establishment of the principles on which the British Commonwealth of nations has been built (1945:vii). He further claims, with regard to the Report, that:

It has long been recognised as the greatest state document in British imperial history. It became, to use a cant phrase, the Magna Carta of the Second British Empire (1945:xlvi).

Martin is more cautious in his assessment of the place of the Report in British Commonwealth History. He maintains that after its publication in 1839, the Report was not particularly supportive of British foreign policy. However, the question of Irish Home Rule Legislation in 1886 led to its revival, while South Africa, in the early years of the twentieth century, 'elevated it to mythological proportions' (Martin 1972:84). The Durham Report was re-issued in 1902, the first re-issue since the 1839 edition and became important reading for Colonial Office officials. It subsequently was consulted by those involved in drafting a constitution for the Colony of the Transvaal in the

early 1900s. Several clauses from the latter constitution were also incorporated in the Rhodesia constitution of 1923.

The connection between the Durham Report and constitutional developments in Southern Africa are of further importance for this thesis. In 1905 the ninth Earl of Elgin was appointed as Colonial Secretary. Elgin himself was the grandson of Durham, and the son of the Elgin who had introduced responsible government into Canada in 1867. The ninth Earl of Elgin regarded both the Durham Report and Walrond's biography of his grandfather as essential reading on the question of the Transvaal constitution. He gave a copy of Walrond's biography to his Under-Secretary, Mr Winston Churchill, and required the West-Ridgeway Committee which went to South Africa, to read the Report. The Committee quoted this Report in its own report (Martin 1972:88) and Churchill was later directly involved in negotiating the detail of the 1923 Rhodesia constitution. It is therefore likely that some of Durham's perspectives influenced his thinking in this regard.

Martin concludes that the Durham Report has contributed most of what has been humane in the imperial experience and nearly all that is still alive in the Commonwealth today. But while the Commonwealth cannot be understood without an appreciation of the spirit of this document, 'it by no means follows that Commonwealth history should be viewed solely through it' (1972:100). Jennings (1962:243) considers the Report to be the greatest of British state papers.

The Report is significant because of the arguments which have emerged from it to be used by constitutional draughtsmen in the twentieth century. The diminution of conflict was of major concern to Durham. Areas for conflict should be reduced, like possible disputes over the distribution of revenue

which would be necessary in a federation. Further, conflict could result over the possible secession of a state or province in a Canadian federation. To reduce the potential for conflict, the majority needed to dominate at the political level. Two further arguments in favour of a unitary state were those of the efficiency and prestige resulting from membership of a large political unit. Similar arguments were raised by African leaders more than a century later in the process of drafting independence constitutions.

4.4.3 The drafting of British colonial constitutions

Besides the philosophical factors which impact upon the constitution-drafting exercise, the methods of drafting a constitution, are also important. Elias (1962), in describing the British methods of drafting constitutions, states that there are five possible ways of bringing colonial constitutions into being: by Order-in-Council; by Letters Patent; by Royal Instructions; by Local Ordinance; and by Act of Parliament (1962:39). The most popular method, he says, is by Order-in-Council. In the case of Southern Rhodesia, an Order-in-Council was issued in 1889 granting a Charter to the British South Africa Company, whereas Letters Patent were issued providing for the 1923 Responsible Government Constitution. In the case of the Bechuanaland Protectorate, the Independence Constitution of 1966 was brought into being by an Act of the British Parliament.

The important point about the British approach to constitution drafting, is that it provided for very little public participation, either directly or indirectly through public representatives. It was a closed process undertaken most often by the legal staff of the British Colonial Office (Jennings 1963:70) unlike the Namibian constitution-drafting exercise of 1989-1990,

which involved numerous participants, both local and international, and was eventually finalised in a Constituent Assembly. The independence constitutions, in the cases of Southern Rhodesia and the Bechuanaland Protectorate, were the intellectual products of a limited number of individuals or what are referred to as elites. Therefore, a study of the perspectives of only a small number of drafters is considered sufficient in this thesis (as pointed out in chapter 1), to explain the origins of British sponsored constitutions for Botswana and Zimbabwe, in particular.

A further important point about the British constitution drafting process was that the British sought to impose a model on the colonies as similar to the Westminster model as possible. On the other hand a degree of autochthony was permitted by allowing input from local inhabitants (Madden in Robinson 1963:1-2), as was the case with the 1923 Southern Rhodesia Constitution.

Schaffer (1965-66) writes on the 'theory of preparation' for the new states within the British Commonwealth. This theory propounded the idea that the new states in the Commonwealth were prepared for a Westminster constitutional model or form through a deliberate process of training and institutional change. However, Schaffer debunks the theory of preparation alluded to by Wight (1952) below. He maintains that preparation for the Westminster model came very late in the decolonisation process and the model itself became a tactic of negotiation and a symbol of independence. The idea was that the final Westminster constitution (a centralised unitary form) negotiated at independence could be a useful and permanent guiding line for new states. Schaffer, writing in the 1960s, maintained that it was a faulty model which could be filled with 'many different spirits'(1965-66:61-62); an early

suggestion by an academic writer that it was not well suited to African conditions.

4.4.4 Early constitutional texts on Africa

One of the early texts published in 1924, dealing partly with the constitutions of Africa, is entitled, *The Constitution, Administration and Laws of the Empire*, by: A. Berriedale Keith. It deals largely with the content of the constitutions of the former Empire. Offering one of the few explanations in the book on the British constitution-making process, the author remarks:

Complex as constitutional law always is, its complication is greatest by far in the case of the Empire, which has grown rather by hazard than by conscious purpose, developing in the process protean shapes of constitutional relations. The process has been rendered possible by the British willingness to compromise and reluctance to insist on strictly logical results (Keith 1924:4).

Keith holds that the ingenuity of creating effective institutions for disparate dominions, such as the federations of Canada, the Commonwealth of Australia and the Union of South Africa, manifested itself at an early stage. He continues:

Less ingenuity has perhaps been shown in the realm of municipal and local government, a topic which though it falls essentially within the sphere of constitutional law, is yet of relatively minor importance (Keith 1924:4).

Keith writes too of the 'avoidance of undue legalism' of the British government, which has assisted in devising constitutions as diverse as those mentioned above (1924:4). The English constitution, he claims, lies at the root of all constitutionalism in the Empire. Throwing further light on the sources of Colonial and Protectorate constitutions, he says these,

are curiously varied as a consequence of the complex history of the Empire. Early colonial law was dominated by the conception that Englishmen carried with them the law of England, and that if they settled any where, the only constitution which the Crown had the right to grant was one based on the English model of a representative legislature (1924:267).

Jennings also refers to the acceptance of Adam Smith's mid- nineteenth century belief that the prosperity of Britain at the time would be assured by maintaining law and order and providing efficient administration in the colonies. The Whig theory at the time was that this could be done by extending British institutions to the colonies (1962:234).

Although not specifically stated by Keith (1924) and Jennings (1962), it would be expected that the unitary constitutional model would be adopted as the model in British colonies and protectorates. Keith affords further insight into British colonial constitutional policy when he refers to, 'The Government of the Native Races', by which he means the black inhabitants of the colonies. He says that,

while it is the prime duty of the Imperial Government to secure peace and order by the suppression of tribal warfare and of the

slave trade and slave raiding, it is essential that the administration of the native territories should be conducted on the basis of enabling the natives to learn to rule themselves The financial burden imposed by an administration through imported officers is a grave burden; it renders it necessary to impose taxation, which in itself may be light, but which none the less presses heavily on natives with scanty means, and it does little or nothing to develop the power of the natives for self-government (1924:121).

This policy has important implications for the distribution of power within former colonies, particularly with white settler minorities like Rhodesia/Zimbabwe (referred to in chapter 6 below).

In a further text published in 1952 by Martin Wight entitled, *British Colonial Constitutions 1947*, he deals largely with the legal relationship between the United Kingdom and its Colonies, Protectorates, Mandated and Trust Territories, and the content of specific constitutions. Like the period about which Keith (1924) writes, no mention is made of municipal and local government. In this text, some insight is given into the centralisation of power and the absence, in colonial governments, of a process of constitutional development or what is referred to above by Schaffer (1965-66) as the 'theory of preparation'. In the Dependent Empire (those parts of the Commonwealth that had not attained self-government and independence from imperial control), judicial power preceded the stage of legislative power. All dependencies, according to Wight, acquired legislative authorities and in the early stages of legislative development, this power was conferred on a single person, the high commissioner or governor, who was thus himself properly called the

legislature. The legislature and executive were united in a single autocratic officer who, in turn, was responsible to nobody except the Secretary of State (Wight 1952:20).

The next step in the process of constitutional development in dependent territories was the establishment of legislative councils which were composed mainly of official members, but could also contain a number of nominated unofficial members. Unofficial nominated members eventually gave way to elected officials, which assumes increasing power within the legislature. When the legislature succeeded in subordinating the executive to its will, by acquiring the power of appointing and dismissing members of the government, responsible government would then come into existence (Wight 1952:33).

The significant point about the evolution of British colonial government is that it was a process dominated by the centre of the political system. Power was generally devolved from a representative of the Crown to representative and responsible legislatures following a British unitary constitutional model. Political power, nevertheless, remained centralised, as is pointed out by Wunsch (1990) below.

Wight maintained that dependent territories were subject to the legislative authority of the Crown-in-Council (1952:88). This meant that only the British Parliament could legislate for territories in certain constitutional areas. One of these areas concerned the uniting, federating or dividing of colonies. Wight maintains that in terms of British constitutional doctrine, a colonial legislature, unlike a sovereign legislature, is created for a specific purpose, and cannot redefine its functions by establishing a federation or providing for a division of legislative powers without the concurrence of the

British legislature (1952:89). There was also the principle of 'repugnancy' as provided for by the Colonial Laws Validity Act, passed by the British parliament in 1865. This principle permitted colonial legislatures to make amongst others, laws concerning the constitution, powers and procedures of their respective legislatures which should not be in conflict with any Acts of parliament, Letters Patent, Order-in-Council or Colonial law in existence at the time. The principle of 'disallowance' came into effect in terms of the Statute of Westminster, 1931 whereby the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, and the Irish Free State and Newfoundland were excluded from the principle of 'repugnancy' as provided for in the Colonial Laws Validity Act, 1865 (Wheare 1960). The Bechuanaland Protectorate and Southern Rhodesia nevertheless remained subject to this provision in the aforementioned Act. There was therefore a legal constraint on the recreation of the colonial political order in Africa.

The presumption then was towards the maintenance of centralised authorities. Power was devolved onto a central authority from an external authority. Any redistribution of power had to be from the top down, which in small sparsely populated states was not always a viable proposition.

In terms of the above, the British constitution-drafting process was not a well defined process. It was largely a response to the circumstances of the time. The tendency however, was to follow British precedent. As Jennings (1956:21) points out, wherever Britain ruled, her constitutional ideas prevailed in the newly independent territory.

4.5 TEXTS WRITTEN FROM THE 1960s

The nature of African society, and challenges confronting African leaders at the time of independence, constitute an important theme in the writings of a number of authors from the 1960s onwards.

Several authors, for example, Panikkar (1961), Wallerstein (1961), Mansur (1962), Sigmund (1963), Deutsch and Foltz (1963), Emerson (1963), Rivkin (1963; 1968 and 1969), Geertz (1963), Currie (1964), Zolberg (1966), Coleman and Rosberg (1970), Nwabueze (1973), De Smith (1977), Markovitz (1977), Collier (1982), Neuberger (1986), and Wunsch and Olowu (1990) have attempted to explain the nature of African society, and the challenges confronting African leaders at the time of independence. An insight into these issues assists one in general terms, in understanding the reasons for the adoption by contemporary African leaders of the centralised unitary constitution, as a necessary legal tool for achieving their political objectives.

Panikkar (1961) is one of the few early authors to specifically spell out arguments in favour of the adoption of unitary constitutions in African states. One of the problems confronting newly emergent states, he believed, was to consolidate their unity. If regional autonomy were granted, that is, if federal constitutions were adopted, that would encourage 'the already existing fissiparous tendencies' (1961:81) within African states. By contrast, a unitary state would discourage this tendency. A further argument in favour of a unitary state, according to Panikkar, was that economic development, particularly in poor countries, required central planning. The central direction of resources beneficial to the whole nation required a strong central government. A further argument in favour of a unitary system of

government, and against a federation, was that in a federation a multitude of officials and ministers appointed at the regional level would waste the financial resources of the new state (Panikkar 1961:81).

Wallerstein views the adoption of centralised unitary constitutional models in terms of power relations within the independent state. Independence, he says, transfers power to individuals and structures internal to the state. There are many internal claimants to the exercise of this power. The consequence of this is that, unless the power is effectively exercised by a central agency, and unless the rules of the power game are generally accepted by all the competitors, disintegration and secession become not merely possible but probable (1961:85).

Wallerstein continues that the external enemy, as a forge for national unity within the African state, disappears after independence:

The removal of the prod to unity - that is, colonial rule - combined with uncertainty, disillusion, and hence opposition, created by the new government, inevitably causes the ethnic, regional, and other particular interests which had temporarily held back their claims to reassert them (1961:87).

African states at independence had not had the time to develop a political culture accommodative of opposition groupings. Opposition, according to Wallerstein,

takes the form of a claim to regionalism - a demand for at least decentralization in a unitary state, federalism in a

decentralized state, confederation in a federation, or total dissolution of a confederation. Inevitably, some regions will be richer (less poor) than others, and if the ethnic claims to power combine with relative wealth, the case for secession is strong (1961:88).

Emerson (1963) similarly emphasises the need for unity and strong government to tackle the difficult problems of the African state.

Geertz writes in terms of primordial attachments in modernising societies. Primordial attachments he identifies as: assumed blood ties; race; language; region; religion and custom (1963:112-113). These primordial attachments may be, and it varies from society to society, be acclaimed as the preferred bases for the demarcation of autonomous political units. This is what leadership elites fear and it is expressed time and again in their writings.

The question then is how do African leaders hold their countries together? Leaders of new states which are about to attain independence, seek integrating institutions. There are a limited number of integrating institutions which may be used. For example, rapid economic development may increase the penalties of disintegration. Another may be the single party, ideology and the heroic leader. In terms of this perceived need, decentralisation was simply incompatible with the requirement for national integration. Centralisation of power was a simple answer to the need to hold the state together.

Rivkin (1963; 1968 and 1969) is another one of the few academic authors who has explicitly delineated the reasons for the adoption of centralised unitary constitutional forms in Africa.

Rivkin says that in almost every case, the new states of Africa have inherited state structures derived from those of the former colonial powers. The tendency, he says, has been for former British, French, and Belgian territories to emerge with governmental institutions reflecting those of their former metropolitan rulers. Mansur (1962:102) also emphasises this factor. More often than not, the critical decisions on state structure were reached in the final stages of pre-independence negotiations between the metropolis and the territory which was about to become independent (1963:131). Rivkin maintains too that local government in former French and Belgian Africa and in large parts of British Africa never developed during the colonial era into a source or repository of effective power (1963:140). The emphasis here is on the inheritance from colonial rule of unitary constitutions and subsequent modifications. Most former colonial African constitutions were unitary with the notable exception of Nigeria.

Rivkin also emphasises the trend towards authoritarianism and the perceptions of federation as justifications for unitary constitutional models. Independent Ghana, according to Rivkin, has provided much of the rationale for centralised unitary states in Africa. Former President Kwame Nkrumah of Ghana was particularly influential in the centralisation process within his country and also in the wider Pan-Africanist movement. His role in the latter movement will be briefly discussed below.

A unitary structure, according to Rivkin, has frequently paved the way for the emergence of authoritarian political systems and the implication of this is that authoritarian political systems are a necessary corollary of a unitary constitutional form.

In this regard Rivkin contends that:

The choice of authoritarian systems by African leaders has been rationalized on the ground that political stability for its own sake and as a necessary precondition of economic growth precludes debate, difference, and dissent, all of which are equated with disorder (1963:153).

The general pattern then in almost all of the new African states has been to follow the Ghanaian precedent of adopting a unitary state model (Rivkin, 1963:137). Rivkin argues further that the rationale offered for the unitary one-party state structure is that in the given circumstances of Africa it is the most efficacious and practical structure for nation-building and economic development (1969:48).

Nkrumah, together with the Convention People's Party (CPP) of Ghana at the time of independence in 1957, according to Rivkin, vigorously opposed any attempt by opposition groups and parties to establish an internal federal governmental structure. They contended that a federal structure was a type of organisation that a new state the size of Ghana with its problems of cultural and tribal diversity could ill afford and they viewed such a federal structure as divisive. The British government, with its own tradition of a unitary state, accepted this position (1963:136).

The experience of Ghana as the first post World War II sub-Saharan country to gain independence, provided the prototype (with the exception of the federal system of Nigeria) for the independence constitutions of most African states.

Centralised unitary governments Rivkin comments,

have proven to be more consonant with the development of authoritarian systems than with democratic systems. They generally provide a structure which concentrates power at the centre and more readily allows for one-party control and manipulation They also allow for the concentration of the leadership elite at the centre to the exclusion of the rest of the country ... (1963:152).

Rivkin further emphasises the point that the colonial legacy of Africa has also exerted influence at other levels in the political organisation of new states. For example, the colonial legacy has played a significant role in determining the structure of local government, and the recognition and preservation of regional differences based on cultural, tribal, or economic grounds. The colonial legacy has also continued to play a role in one guise or another through district or provincial commissioners, in regulating political activity and the acceptance and use of preventive detention acts, restrictive citizenship practices, and the use of restrictions on the press and rights to freedom of assembly (1963:132).

The important point is that the methods of governing in the colonial unitary state provided an important legacy for the independent African state. This legacy also facilitated the centralisation of power before and after independence, since unitary constitutions are more easily amended than federal constitutions. Moreover, this process has been accompanied by the transformation of parliamentary to presidential systems of government at different stages in most countries on the continent.

There is a clear preference among African leaders for authoritarian political systems after independence, which are combined with unitary state structures, to produce strong one-party systems of the left or the right. Federation might be incompatible with a single party system, as federal units might harbour strong minority parties which could frustrate African leaders' political objectives, one of them being nation-building. The decentralisation implicit in federalism could prove incompatible with the centralisation implicit in a one-party structure (Rivkin 1969:48). The concept of unity in practice throughout the length and breadth of the continent has, for the one-party states, come to mean uniformity.

Writing in 1968, Rivkin argues in a critical tone, that in previous years it had become quite fashionable to denigrate the importance of constitutional and governmental structures in the newly independent states. Most African states chose 'centralized unitary state structures [constitutions] with authoritarian political structures and systems' (1968:19). Rivkin (1968) maintains that the critically important institutional framework for development in Africa has been overlooked. Constitutional limits on the functioning of governments have not been spelled out and this has made it impossible for truly national institutions representative of the country as a whole to grow and develop. Institutions are dominated by the party or a small group of individuals creating uncertainties and impacting upon development efforts (1968:17). This is another early criticism of the centralised unitary state which is now being reassessed, as referred to in the Postscript, chapter 8.

Besides detailing the arguments for the unitary state in Africa, Rivkin (1969) also details those against federation and decentralisation. His argument is

based on the assumption that federations are more decentralised than unitary systems of government. Federalism in radical nationalist circles 'is a dirty word', according to Rivkin, and is frequently viewed as 'a neo-colonialist device to keep newly independent African states weak, divided, and vulnerable to a new colonial intrusion' (1969:86).

Former Presidents Kwame Nkrumah of Ghana and Jomo Kenyatta of Kenya, who were opposed both before and after independence to decentralised institutions, removed, after independence, degrees of decentralisation and federation inherent in their independence constitutions. Nkrumah's objections to regionalism, balkanisation, decentralisation and federation within existing state boundaries will be analysed below.

The anti-federalist view sees federation and balkanisation as attempts to keep individual states weak and thus submissive to European domination. During independence negotiations, so the anti-federalist thesis goes:

the irreconcilable and scheming former colonialists are viewed as seeking through constitutional and political devices, such as federalism, and those institutions commonly associated with it, multiparty political systems, local self-government, and entrenched bills of rights, to prevent the development of strong, unified and economically as well as politically independent African states. Thus federalism is seen as a refined neocolonialist extension of the colonial balkanisation practice, designed to enfeeble or split up independent African states (Rivkin 1969:87).

In many formerly British ruled African states a policy of 'indirect rule' was applied. However, traditional or local government structures are not sufficiently well established or widespread (with few exceptions) to resist centralising tendencies. In any event, Rivkin says, 'there is nothing in the unitary structure that can be viewed as a built-in regulator of the trend towards centralisation comparable to that which exists in federal structures' (Rivkin 1969:96).

There is little motivation for unitary states with one-party structures or dominant-party structures to seek new problems in the form of independent interests and power bases. Thus the unitary state has been accompanied by the centralisation of political power and the concentration of that power in the capital city.

S.A. de Smith in his book, *The New Commonwealth and its Constitutions*, published in 1964, writes on 'Westminster Export Models', drafting techniques, the later advent of 'presidentialism' and the centralisation of political power. De Smith's arguments on post-colonial Africa will also be referred to at some length, since they are indicative of the colonial legacy.

Under the heading 'Presidentialism in Africa', De Smith writes of the replacement of liberal democratic with autocratic presidential constitutions. In general, constitutions in Africa after independence were adapted to provide for executive presidents with a fixed tenure of office and the removal of ministerial responsibility to the legislature. There was also a concurrent move towards single-party rule. These changes were characteristic of both former French and British ruled Africa.

The trend in Africa after independence has been towards authoritarian rule. In analysing the move towards authoritarianism, De Smith provides several reasons which harken back to the colonial period. He says that:

Men who have been denied responsibility for too long, who have experienced humiliations because of the colour of their skins, who have been told that they are too immature to be entrusted with real authority, who have perhaps spent most of their lives in a condition of relative poverty, find themselves in power, dispensing favours, making big decisions, giving orders to European civil servants, addressing enthusiastic mass meetings, listened to with apparently respectful attention at international meetings, received at the White House and the Kremlin as distinguished visitors, and also enjoying the seductive material perquisites of high office A primary object of political activity the world over is to attain power and to hold on to it as long as possible (1964:235).

De Smith does, however, point out that it would be a crude error to ascribe the behaviour of African governments solely to self-interest. He advances two additional reasons for the trend towards authoritarian rule. Reference will be made below to other authors who advance similar reasons.

First, De Smith argues:

all the new governments face the problem of building a nation, of developing a national consciousness within the arbitrarily drawn frontiers inherited from the colonial powers. Almost invariably

the main divisive force is not religion, economic interest or political ideology but tribal particularism If the groups are few but powerful, attracting passionate loyalties and engendering equally strong antipathies, it may be necessary to come to terms with tribalism by agreeing to a federal system of government But if it has been possible to create a majority political party there is a temptation - and one which is seldom resisted when the opportunity to succumb to it arises - to move in another direction: to insist on the acceptance of a single national ideology under a single national leader, and to reduce the tribal strongholds by a judicious combination of strong-arm methods and material inducements (1964:236).

Although not spelled out, the end result of this approach must be the creation of a centralised unitary state and the diminution of any local authority power structures.

Secondly, De Smith contends,

the economic and social problems of Africa differ not only in degree but also in kind from the issues that western governments have to face in the twentieth century. A modernising African government has implacable enemies: poverty, ignorance, disease and inertia. To combat them demands imagination, initiative and dedication. It demands strong government operating in an atmosphere of urgency (1964:237).

De Smith returns to the issue of the non-toleration of organised opposition

and the clear preference for a single-party state on the part of independence rulers. Opposition is seen as divisive. If there are no constitutional prospects for an opposition group to accede to power, it might espouse a separatist cause, turn for support to a rival neighbouring state, or adopt conspiratorial methods with the aid of dissident officers in the police or armed forces.

Despite governmental and regime changes, countries tend to continue with previous constitutional forms. Rulers and future rulers tend to view constitutional and political orders from the perspective of what is in their interests. Where ethnic groups have been excluded from power, they tend to favour a unitary form of government (1964:237).

In Zolberg's (1966) study, *Creating Political Order. The Party-States of West Africa*, he explains the emergence of the centralised state in West Africa in terms of ideology and the emergence of the one-party state. He sets the scene for the creation of one-party centralised unitary states in West Africa, claiming that the assumption of responsibility by the new leaders of African states, 'produced a shocking awareness of the magnitude of the burdens of government in an underdeveloped country' (1966:39). New African leaders measured the levels of development in their new countries by international standards and undertook to effect fundamental change through government action. National integration was seen as a necessary change to bring about integration between disparate tribal groups. Further, Zolberg says, an increased awareness of the importance of the central authorities arose, and hence more demands have been directed at them. There are few filters for these demands; the social habits that made the leaders very approachable before they became officials are not easily unlearned (1966:41). African leaders needed

suitable concepts of political organisation, and it was the construction of ideologies which fulfilled this need, in particular the one-party ideology. As pointed out above, this ideology was best accommodated in a unitary state. For many African leaders, 'oneness' or 'national integration' involved a strong stand against internal 'federalism.' Federalism or political decentralisation was seen as 'immoral' and subversive of the unity of government. Zolberg continues that,

the notions of separation of powers and of checks and balances are incompatible with the mood of 'oneness'... it is possible to detect an overwhelming concern with the avoidance of conflict, with rationality, and with order (1966:63).

Coleman and Rosberg, writing on *Political Parties and National Integration in Tropical Africa*, speak of a, 'process of consolidation' which encompasses a number of activities. One of these activities undertaken by ruling party elites is the carrying out of a 'set of measures ... designed to strengthen unitary one-party rule' (1970:668). The general trend has been to strengthen the executive power and this has been achieved through the fusion of the functions of president and prime minister into a single powerful executive office and the formal creation of uni-party states. A key element in what Coleman and Rosberg (1970) (Sigmund 1963 refers to the single or dominant party and democratic centralism) refer to as 'uni-partyism' is the need for nation-building and modernisation. This requires, according to Coleman and Rosberg, a central and 'unitary organization' of power within the state. Political parties in Africa are the only structures that can assist in achieving these goals (1970:668).

Nwabueze writes on the constitution in emergent states. Referring to the former colonies, he says that in only a few cases were constitutions accepted by the people of those political systems in a referendum or in a constituent assembly elected specifically for that purpose (1973:23). Linked with the method of acceptance of a constitution is the question of legitimacy, that is, how to make it command the loyalty, obedience and confidence of the people. Nwabueze continues that constitutions in emergent states, including Africa, are characterised by a certain artificiality in the eyes of the people and are remote from their lives and thought (1973:24). The supremacy of the constitution as the supreme law may therefore be questioned. The need for legitimation, Nwabueze suggests, did not exist at the time of independence in former colonies. Constitutions drafted, for example, for former British colonies, were drawn up by a few lawyers and professional politicians (Nwabueze 1973:31). Nwabueze emphasises the exclusive nature of the constitution-drafting process and the impact of colonial constitutional values.

Markovitz describes the atmosphere prevailing at the time of independence in terms of decolonisation and the relationship of classes to this process. As former colonial powers gradually began to consider the future possibilities of independence for their territories, a Westernised African elite (class) began to emerge, who were mainly employees in commerce, the bureaucracy and service professions. The former colony was dominated by a European elite (class) whose departure enabled the new African elite (class), to aspire to filling the functional roles of the Europeans. Although this elite might have been aware of the 'colonial situation', they rarely questioned it. Politics and colonial structures became an aid to their achieving pecuniary gain and individual prestige (1977:182).

Collier, extending this argument, writes of the process of democratisation and the holding of elections. The democratisation process initiated by former metropolitan powers served to socialise African elites and to enable states to retain semblances of the former colonies after independence (1982:30). These African elites, who had negotiated independence and independence constitutions, were ready to accept colonial structures with very little change (Markovitz 1977:179). It could be argued that one of these structures was that of the unitary state.

A common thread in the above discussion for the rationale behind the creation of a centralised unitary state is both the desire to maintain the geographic extent of existing political units, as well as the potential for increasing their geographic size. There is a strong reluctance to break up existing units into smaller political units, to engage in what is referred to by a number of writers and African leaders as 'balkanisation'. The term balkanisation refers to the processes of dissolution and disintegration which took place in the Ottoman and Habsburg Empires in Europe during the nineteenth and twentieth centuries. The presumption was that an attempt should be made to assimilate or integrate (as Shils 1982 chapter 3 understands the concept) diverse groupings within the colonial African state through political and constitutional devices in order to facilitate nation-building.

The minimal or optimal size of a state has, amongst political philosophers, long been a topic of debate (Neuberger 1986). Opponents of small states may argue that these lack the military power to defend themselves, they have insufficient political standing to make their independence meaningful and they cannot use the economies of scale, that is mass production, to achieve development and wealth. The opposing view is that in small states there is a

greater potential for genuine self-government, participation and spontaneity.

In the African context balkanisation has acquired a meaning of its own. In the European sense it resulted in the liberation of many people from colonial rule, but also give rise to small, weak states. Many African leaders, like Nkrumah of Ghana and Gowon of Nigeria, disliked the concept of balkanisation. For Nkrumah, balkanisation in the African context meant 'small, weak and unstable states' (Neuberger 1986:96). It was feared by African leaders that the acceptance of limited internal balkanisation, that is the reduction in the geographic extent of existing colonies, could set off a chain reaction which once started would be difficult to contain. Balkanisation was also associated with secession and, according to Jomo Kenyatta, former President of Kenya, once secession were legitimised 'there would be no end to the exercise. Claims would heap upon claims and anarchy would be the result' (Neuberger 1986:97). Balkanisation was, moreover, seen by African leaders and the All African People's Conference held in Tunis in 1960, as 'a way to perpetuate neo-colonialism' (Neuberger 1986:98). The response to Balkanisation amongst African leaders was the promotion of the idea of African unity and Pan-Africanism. Both are discussed below.

For Sékou Touré, former President of Guinea, the creation of a 'viable national entity' was important. He argued that it should not be necessary to think in terms of tribal, ethnic and religious rivalries, thereby suggesting that internal balkanisation was unacceptable. He saw an important role for the centralisation of power in national institutions and for the Democratic Party of Guinea as the sole party in the state in order to achieve national objectives. For this to happen, he further argued that the Guinean state had to be democratic, unitary and progressive. Power also had to be concentrated

in national institutions to be exercised in terms of the principles of democratic centralism (Sigmund 1963:chapt.12).

For African leaders like Nkrumah, Africa was, in terms of existing colonial boundaries, already balkanised and thus it was necessary to move away from this state of affairs. Africans had to create greater political units out of the existing ones. New federations created from existing states were acceptable. For example, Nyerere, former President of Tanzania, supported, in June 1960, the establishment of an East African Federation. This was a follow on to the establishment by the Tanganyika African National Union (TANU) of the Pan-African Freedom Movement for East and Central Africa (PAFMECA) in 1958. Nyerere, writing in 1966 maintained that at the time of the formation of PAFMECA, a belief was held that national boundaries separating different organisations were artificial and there was a feeling of mutual sympathy and interdependence between similar organisations across these boundaries. African unity and integration thus became corner stones of Tanzanian foreign policy (Nyerere 1966:5).

Although not explicitly stated in the literature, the deduction can be made that decentralisation and devolution of power in existing states would have been seen as a step in the direction of balkanisation and therefore unacceptable to African leaders of the 1950s and 1960s.

The Failure of the Centralized State. Institutions and Self-Governance in Africa, edited by Wunsch and Olowu in 1990, although focusing primarily on a reassessment of the centralised unitary state in Africa in the post-independence period, provides some further useful insights into the initial establishment of the centralised unitary state. In discussing the colonial

inheritance of independent Africa, Wunsch holds that colonial administrations, whether British or French, neglected, distorted and sometimes destroyed local rule systems through which persons were able to take collective action. Even where colonial rule was benevolent, such rule disabled societies in a fundamental sense: it removed the necessity for persons to discover, and the opportunity for them to sustain, local collective mechanisms to solve local collective problems (Wunsch 1990:27).

Wunsch continues by arguing that,

colonies created the worst possible situation as far as developing broad empowerment through multiple institutionally based organizations. Sovereign authority [sic] was highly centralized in the hands of the governor or even in the metropole; effective governance was in the hands of a district officer who was highly paternalistic and operated in a personalistic and *ad hoc* manner because of distance from the capital; and logistical support was centralized, slow and unresponsive. Local residents were therefore neither involved in their formal governance (centralized in the capital or overseas) nor left alone to solve their own problems and to build on their existing institutional infrastructure (Wunsch 1990:27).

Colonial rule left centralised structures of power to post-independence African leaders. Regional and local political organisations were stifled and those which did exist were not sufficiently developed to resist the centralisation of political power. Wunsch (1990) views colonialism, the international environment and domestic socio-economic conditions as the most

important contributory factors to centralised government in Africa (Wunsch 1990:38).

Selassie writes of the imitation of metropolitan constitutional systems. Writing on the adoption of a constitution for the former Belgian Congo at independence, Selassie says that militant nationalist leaders of that country insisted on the introduction of Belgian Parliamentary government, 'because, it was argued, it was better to copy a system that "had been tested" than to face the hazards of experimentation' (1974:21).

African elites, which are sometimes referred to as 'inheritance elites' together utilised centralised colonial structures to establish their authority: to govern, to tackle development problems and to forge national unity. Some of their rationale for the greater centralisation of power is discussed below. 'Inheritance elites' wanted similar political structures to those of the departing colonial governors. One of these structures was that of the centralised unitary state.

Much of the justification for the adoption of centralised unitary forms, centres on the needs of the African state and its leaders at a particular historical point in time. Very little consideration seems to have been given as to the long term suitability of the centralised unitary state.

4.6 NATIONALISM

The nationalist movements in colonial Africa contributed towards the setting of the ideological climate for the eventual creation of centralised unitary states. Following World War II, nationalism became a driving force in much of

colonial Africa. Nationalism is defined in various ways, but may be considered to be an ideological movement which strives for the attainment and maintenance of autonomy, cohesion and individuality for a social group, some of whose members conceive it to be an actual or potential nation. The nationalist strives for emotional solidarity, sovereignty of the state and the rights of citizens to participate in decision making (Smith 1979:87). Nationalist movements permeated the politics of all former African colonies. The thrust of these movements was towards autonomy and sovereignty for their respective colonies and the attainment of power at the centre. It was a reaction against European domination (Kedourie 1970:1). Thoughts of constitutional decentralisation would have constituted a centrifugal force, which would have clashed with nationalist centripetal forces. According to Mboya, a Kenyan nationalist leader, African nationalist movements gave no consideration to details of problems or issues, unlike British and European political parties would, through committees, research workers and discussion groups. Such discussions would have created opportunities for differences to be addressed within the respective movements (Kedourie 1970:480-481). Mboya is suggesting here that constitutional innovation was not possible due to the nature of the nationalist movement in the African colony. African nationalism thus furthered the intellectual and ideological climate for the creation of the centralised unitary state.

In the late colonial era, African nationalism then was directed towards independence from a specific colonial power and unity referred to that between those fighting the same immediate battle. Beliefs in continent wide unity, also referred to as Pan-Africanism, were entertained at the same time as commitments to regional unity (Wallerstein 1968:112-113). This theme is referred to again below.

4.7 AFRICAN SOCIALIST AND MARXIST-LENINIST IDEOLOGY

Underpinning the nationalist movement, various strands of socialist and Marxist-Leninist ideology also contributed to the contextual environment in which the centralised unitary African state came into being. The idea of African Socialism in the 1950s and 1960s was used by African leaders to justify their authority and to mobilise their people. There is no one precise definition of African Socialism and the ideology itself is the product of diverse leaders. Friedland and Rosberg (1964:2) describe African Socialism as being neither a precise ideology nor a specific guide to action, but is nonetheless a set of dimensions to which Africans give specific content as they deal with their problems. Despite the lack of homogeneity in African Socialist ideology, Friedland and Rosberg identify three main themes embodied in the doctrine, namely: the problem of continental identity (which is discussed below); the crisis of economic development; and the dilemmas of control and class formation (1964:3-9). The authors also identify four basic trends which appear to be relevant to the analysis of African Socialism. The trends are:

- First, the idea of the social obligation to work;
- secondly, the conversion of labour unions from consumptionist to productionist associations;
- thirdly, an orientation toward a classless society or a society with minimal stratification patterns;
- fourthly, a tendency towards developing a society that can be characterised as 'focal institutional' (1964:3-4).

The fourth trend is of particular importance in this study. Focal

institutional societies are monist in nature and are dominated by a single institution which becomes the focal point upon which all others depend. These societies, as discussed in chapter 3, can be described as 'concrete monist'. Friedland and Rosberg (1964) advance several reasons for the construction of 'focal institutional' societies. One of them as pointed out above, is that African leaders have frequently expressed a desire for unity and have expressed hostility to tribalism in particular or to use Geertz's (1963) terminology - primordial attachments. To minimise tribalistic attachments, a single central focal institution is considered desirable. Friedland and Rosberg further say that the formation of 'focal institutional' societies also have historical roots. Africans they say, who come from traditional societies are accustomed to a considerable extent to the idea that society should be centred upon a single complex. Further, they maintain that the colonial period was marked by a tendency for a central government to emerge as an important and dominating element in the lives of Africans. Central governments represented a major source of monolithic power which was conveniently utilised and strengthened by African leadership elites (1964:29-30). The single party state was seen as an important instrument in achieving a 'focal institutional' society.

As far as the theme, crisis of economic development is concerned, Sigmund (1963:12) argues that despite the particular socialist strand to which a leader might belong, there was a common commitment to a new form of development that would allow planning and control of the economy from the centre.

The centralised unitary state can be seen as a necessary corollary to the process referred to above.

4.8 AFRICAN UNITY AND PAN-AFRICANISM

4.8.1 African leaders

In the 1960s, a number of prominent African leaders expressed themselves in written texts and in speeches on the need for African unity and Pan-Africanism, that is unity and union (as defined in chapter 2) between existing states. However, there are differences in approach between them. Nkrumah for example, tended to be the most radical of all and advocated an immediate continental political union, whereas Kaunda was more of a gradualist in his approach and was accommodative of regional political unions as phases in the creation of continental political union. The Pan-Africanist movement represented a centripetal force, in that the idea was to create larger political associations. It also established an intellectual climate in which African states became independent. While this movement was dominant, decentralisation was unlikely to receive much support or attention: centripetal forces tended to neutralise centrifugal ones.

4.8.2 Azikiwe

In an address to the Committee of African Organisations, delivered in London in August 1961 by Dr Nnamdi Azikiwe, Governor-General of Nigeria, he spoke of the idea of an 'African Leviathan[✓]', echoing Hobbes' notion of a commonwealth (Hobbes 1962:177) referred to in chapter 3 above. Azikiwe was referring to the need for the continent to unite on a continental or regional basis to achieve certain political objectives (Legum 1962:274). He advanced his argument by saying that, when such a Leviathan had become a reality, it would be necessary for the nature of its form of government to be revealed:

The three main forms are known to students of government; unitary, federal and confederate [sic]. If it is to be union [sic], then it will be highly centralised with some devolution of its internal sovereignty to its local government units. If it is to be federal, then it will be necessary to decide whether the internal sovereignty of the federal government shall be explicitly defined, whilst allocating to it the exclusive exercise of internal sovereignty, but reserving residuary powers to its co-ordinate units as is the case in Nigeria If it is to be a confederate form of government, then both the external and internal sovereignties of the individual members of the confederation shall remain intact ... (Legum 1962:275).

Azikiwe's is one example of a number of pleas for greater associations of African states.

4.8.3 Nkrumah

Kwame Nkrumah, former president of Ghana, was a leading proponent of Pan-Africanism or political union between the states of Africa. Writing in 1960 (Emerson 1965), he felt that there were two threats to the continent of Africa: nuclear tests in the Sahara by the French Government and the Apartheid policy of the Government of the Union of South Africa. In order to combat these threats, Ghana should surrender its sovereignty to a higher authority. African unity demanded the sacrifice of all personal, tribal and regional objectives and considerations.

Nkrumah in another of his writings, *Africa Must Unite*, published in 1963, further spelled out the need for the political and economic unification of the African continent. In terms of his thinking there were three objectives for the political and economic unification of Africa. First, according to Nkrumah, there should be over-all economic planning on a continent wide basis. That would increase the industrial and economic power of Africa. He reasoned that so long as Africa remained balkanised, regionally and territorially, the continent would be at the 'mercy of colonialism and imperialism' (Mutiso 1975:344-345). Secondly, Nkrumah advocated the establishment of a unified military and defense strategy:

I do not see much virtue or wisdom in our separate efforts to build up or maintain vast military forces for self-defense which, in any case, would be ineffective in any major attack upon our separate states (Mutiso 1975:345).

Thirdly, Nkrumah believed that, stemming from the previous two objectives for Pan-Africanism, it would be necessary for African states to adopt a unified foreign policy and diplomacy to give them political direction in their joint efforts for the protection and economic development of the continent. He recommended that:

The desirability of a common foreign policy which will enable us to speak with one voice in the councils of the world, is so obvious, vital, and imperative that comment is hardly necessary (Mutiso 1975:345).

Nkrumah believed that a constitutional structure could be devised which would

secure the above objectives, 'and yet preserve to some extent the sovereignty of each state within a Union of African States' (Mutiso 1975:345). A continental union, Nkrumah stressed, was

an inescapable desideratum if we are determined to move forward to a realization of our hopes and plans for creating a modern society which will give our peoples the opportunity to enjoy a full and satisfying life (Mutiso 1975:346).

4.8.4 Nkrumah and the Congo crisis

The Congo crisis is an illustration of a specific instance where a deliberate policy choice was made between an internal federation and a centralised unitary state. Kwame Nkrumah, the most influential Pan-Africanist at the time, was directly involved in this choice. The facts of the Congo crisis are briefly as follows. In 1960 the Congo became independent from Belgium. Shortly after independence, three major secession movements emerged in Katanga, South Kasai and the Stanleyville area of Oriental Province. Besides the emergence of these movements a series of army mutinies broke out accompanied by civil disorder and a breakdown of local government. The Congo consisted of six provinces which eventually fragmented into twenty-two, not fused in any way to facilitate nation building. In a series of negotiations, variations of constitutional orders were proposed, from a weak confederal system at one extreme to a relatively centralised form at the other. Cyrille Adoula was at the time Prime Minister of the Congo, and it was in these negotiations that Nkrumah became involved.

In one of numerous communications between Nkrumah and Adoula, Nkrumah advised:

In order to repair effectively and quickly the serious damage done to Africa as a result of imperialism and colonialism, emergent African states need strong unitary governments capable of exercising a central authority for the mobilisation of the national effort and the co-ordination of reconstruction and progress (*Axioms of Nkrumah* 1967).

What emerged was a federal type of constitution with strong centralist tendencies. The major power was vested in the President, and the Prime Minister and Cabinet were chosen by, and made responsible to, the President (Rivkin 1969:183). This is one example of the considerable influence that Nkrumah had on the politics of Africa in the early 1960s.

4.8.5 Nyerere

'African unity' (rather than Pan-Africanism) was a recurring theme in the 1960s in the writings and speeches of Julius Nyerere, former President of Tanzania. Two of his key publications, amongst others, which touch on this theme are *Freedom and Unity* (1966) and *Freedom and Socialism* (1968). The theme of 'African unity' is stated in a 1961 speech in which he says that regional associations should precede unity of the whole continent (Nyerere 1965:136). Again in the same year, Nyerere stated that once the potential for conflict on the continent had been avoided through unity, could African states tackle pressing socio-economic problems (Nyerere 1965:153-154).

Writing in 1965, Nyerere points out that the leaders of the thirty-six independent African states existing at the time, knew something of the practical difficulties which they faced in attempts to achieve economic

development in a divided world. Each of the African states was then so weak in relation to the outside world, and so dependent upon it, that hardly any decisions could be made without some consideration of the attitudes which the larger powers might consequently adopt (Nyerere 1966:335-336).

Unity for Nyerere was all-important. It was,

essential for the safety, the integrity, and the development of Africa Unity must prevent the political exploitation of our fears and the needs by those outside Africa; it must not be possible for the different parts of Africa to compete one against the other for economic favours in return for political concessions Unity must also ensure that Africa becomes one market, and that its people cease to be divided by customs posts and tariff walls along a hundred frontiers. Africa's commerce must be facilitated by a single currency, and its productivity enhanced by the rationalization of administration in relation to economic factors. These things require that in relation to the outside world the separate national states of Africa must cease to exist. They must be replaced by Africa. National sovereignty must be surrendered by the nation states in favour of an All-African Government (Nyerere 1966:338).

Nyerere did not believe that the continent-wide state need be a unitary state; the new African state could be a federal one. The important characteristic of this state, according to Nyerere, was that:

The stronger the Central Government the greater the potential of

Africa; for powers can be devolved in practice as necessary, but they are only with difficulty surrendered by a lesser authority to a greater one. It is also important to realize that, once the decision to unify has been taken, it is the smaller and poorer nation states which have most reason to support a strong centre; only in such case is it possible to equalize benefits and burdens over the whole continent (Nyerere 1966:344).

For Africa to be united, according to Nyerere, sovereignty must reside in a single body which incorporated the existing sovereign states. Nyerere conceded that the new African state need not be a unitary state with a single all-powerful government, it could be a federal state with a division of powers between the centre and the constituent parts. Nyerere believed that the stronger the central government, the greater Africa's potential would be to achieve political and economic strength (Nyerere 1966:344). His is one of the few attempts at explaining in detail future constitutional arrangements for a Pan-Africanist Africa.

4.8.6 Kaunda

Kenneth Kaunda, former President of Zambia, writing in his book, *A Humanist in Africa*, published in 1966(a), also supported the objective of African unity, but cautioned against rapid progress towards union. In support of his belief in African unity, Kaunda in fact quotes, from the Preamble to the Charter of the Organisation of African Unity (OAU), the following:

... inspired by a common determination to strengthen understanding and co-operation amongst our states in response to

the aspirations of our peoples for brotherhood and solidarity, in a large unity transcending ethnic and national differences ... (Kaunda 1966:136(a)).

In the same book Kaunda argued that there was more 'internationalist thinking' in Africa than in any other continent of the world and also a desire to avoid 'balkanisation'. Arguing against advice to shelve ambitions for wider unity until national states had been firmly established and solved their domestic problems, Kaunda advanced two justifications for early national unity. The one was a psychological justification, that the minds of the people were still malleable early in the independence period and would more readily accept sacrifices which wider links would demand, twenty-five years down the line. The second was economic. Unity he maintained was essential to exploit the economic resources of the continent (Kaunda 1966:113-115(a)).

In another of his books, *Zambia. Independence and Beyond* (1966:43)(b), he argued that Pan-Africanism could be a constructive force for the uniting of economic operations which in turn would lead to political unity.

4.8.7 A counter argument to unitarism

Chief Obafemi Awolowo, writing in 1947 (Emerson 1965) and 1966, argues against unitarianism [sic] and for internal federalism [sic] in Nigeria. Awolowo is one of the few African writers and leaders who actually sets out the arguments for or against unitarism within a particular state, namely Nigeria. He postulated that unitary constitutions were suited to uni-lingual countries, and federal constitutions to multi-lingual countries. In his 1947 writings, Awolowo maintained that Nigeria was not a nation, it was merely a geographic

expression and there were vast differences in the potentialities of the groups within the territory. The incompatibilities between these groups militated against unification and the creation of a number of provinces within the territory.

4.9 PAN-AFRICANIST RESOLUTIONS

Over the years a number of Pan-Africanist Congress resolutions were passed. These too helped establish the climate of opinion for the centralisation of power within individual colonies and states. Some of these clauses will be referred to here. In December 1958, the All-African Peoples Conference held in Accra, Ghana adopted a number of resolutions, one of which was on 'Frontiers, Boundaries and Federations'. Parts of this Resolution states the following:

Whereas the unity of Africa will be vital to the independence of its component units and essential to the security and general well-being of African peoples; Whereas the existence of separate states in Africa is fraught with the dangers of exposure to imperialist intrigues and the resurgence of colonialism even after the attainment of independence, unless there is unity among them; Whereas linguistic, religious and cultural divisions and national sovereignty should be subordinated to the overriding demands of Pan-African Unity where common geographical and economic considerations and national interests suggest the grouping of certain States; Whereas amalgamation, federation or groupings should only take place between independent states governed by Africans; Be it resolved ... that the Conference; (a)

endorses the desire in various parts of Africa for regional grouping of States ... (Legum 1962: 229-230).

A further reference to the need for African unity was made at the Second Conference of Independent African States held in Addis Ababa, in June 1960. The Resolution held that, 'co-operation and unity among African States are essential for the maintenance of the independence and sovereignty of Africa' (Legum 1962:152).

In March 1961, The All-African Peoples Conference held in Cairo, Egypt adopted a Resolution of Neo-colonialism. It maintained:

This conference denounces the following manifestations of neo-colonialism in Africa:

(b) Regrouping of States, before or after independence, by an imperial Power in federations or communities linked to that imperial Power.

(c) Balkanisation as a deliberate political fragmentation of States by creation of artificial entities, such as, for example, the case of Katanga, Mauritania, Buganda, etc. (Legum 1962:255).

The Preamble to the Charter of the Organisation of African Unity, adopted in May 1962, makes further reference to African unity and the need to:

promote understanding and collaboration among our States in response to the aspirations of our peoples for brotherhood and

solidarity, in a larger unity transcending ethnic and national differences (Mutiso 1975:394).

The Preamble to the Charter also declared itself,

determined to safeguard and consolidate the hard won independence as well as the sovereignty and territorial integrity of our States, and to resist neo-colonialism in all its forms ... (Mutiso 1975:394).

Statements of this nature were centripetal forces (referred to in chapter 3) in the creation of centralised unitary states in Africa. A climate of opinion was created that individual colonies and states should become components of greater political entities. Decentralisation was unlikely to occur at the same time as states were considering or being encouraged to invest powers in greater political entities.

4.10 SUMMARY AND CONCLUSION

This chapter has been concerned with some of the general literature dealing either directly or indirectly with the establishment of the centralised unitary state in Africa, and more particularly in former British colonies. Since the continent is vast, specific experiences in the process of establishing centralised unitary states must also differ widely. The authors writing on the African state are also influenced by their own theoretical perspectives. This probably explains why there are differing emphases in the literature and no single coherent explanation for the establishment of centralised unitary states in Africa.

Two of the great challenges in explaining the development of the centralised unitary state in Africa are: first the necessity to deconstruct words and concepts which are used in a great many senses in order to find common meaning; and secondly, the inability to pin-point the degree to which specific factors and individuals have influenced the development of the centralised unitary state in Africa. Inferences have to be made as to what is understood by various words and concepts like 'devolution' or 'unity'. Similarly, inferences have to be made as to how specific factors influenced a constitution-making process. For example, particularly in the case of the Congo, referred to above, it is clear that Nkrumah influenced the process, but it is unclear as to whether the final outcome was entirely as a result of this. Also, in other cases where unitary constitutions have been adopted, external forces have played a greater role than internal forces. More specific conclusions will be made in the case studies that follow in chapters 5, 6 and 7.

Different factors have influenced the adoption of centralised unitary constitutional models at different times in the historical evolution of the African state. In the first few decades of the twentieth century, ideas and approaches emanating from the European colonial powers, like the Durham report, influenced this process. The Westminster model was, by and large, exported to Africa with a degree of autochthony permitted. This model established precedents and became an important inheritance amongst African leaders. In the case of most African countries nearer the time of independence, practical conditions, socio-economic and ideological factors like the various brands of socialism, began to influence the constitution-drafting process. The need, for example, for nation-building, national unity and economic development began to impact upon this process.

The new independence leaders in African countries had to contend with centrifugal forces such as ethnic and economic divisions within their state boundaries. The political cultures of the people of African states at the time of independence were fragmented and the task was to build a centripetal political culture which leaders viewed as being sound and desirable. This they believed could be undertaken by integrating or assimilating diverse groups in a centralised unitary state. The process was, moreover, influenced by dominant leaders and ideologies, and perceptions of alternatives. Internal federation was seen as being divisive, in that it would perpetuate centrifugal forces and facilitate neo-colonialism. A distinction was not made between internal political or geographic federation and federation in which boundaries followed ethnic or religious divisions. The natural legal alternative to a unitary constitution was seen as a federation.

Perhaps the most important factor contributing towards the creation of the centralised unitary state in Africa was the climate of opinion prevailing at the time: it was believed that the centralisation of power would lead to political and economic progress and prosperity. Pan-Africanist thinking was important in this regard. The thinking was that the larger the African political unit, the better. Political power should rather be allocated to higher authorities rather than lower authorities within the African state. The important deduction to be made from this thinking is that, internal decentralisation or devolution was unlikely to occur at the same time as the allocation of powers were being made to new centralised authorities. Very little thought seems to have given to whether the centralised unitary state could in the longer term subdue or accommodate centrifugal forces like ethnic groupings, and also whether it would provide the framework under which rapid economic development could take place.

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Chapter 5

BOTSWANA (BECHUANALAND PROTECTORATE)

5.1 INTRODUCTION

The Bechuanaland Protectorate became the independent Republic of Botswana on 30 September 1966, in terms of the Botswana Independence Act, 1966 passed by the British Parliament. This Act provided for a centralised unitary constitution for the territory.

As stated in chapter two above, both political-legal criteria, and fiscal criteria are utilised in this thesis for the identification of a centralised unitary state. As far as the political-legal criteria are concerned, the central government or authority should be supreme and there should be an absence of subsidiary sovereign bodies. As far as the fiscal criteria are concerned, total government expenditure at the central level should exceed that at the regional and local levels, and central government expenditure expressed as a percentage of Gross Domestic Product (GDP) should be substantial that is about 30 percent.

In terms of the political criteria, the independence Constitution of Botswana does provide for a supreme central government or authority and does not provide for subsidiary sovereign bodies. Provision is, however, made in terms of ordinary legislation for the establishment of representative District, Traditional Authorities and Town Councils.

In terms of fiscal criteria, in 1967 approximately 89,6 percent of total state expenditure was expended by the central government, the balance being expended

by Local Councils, District Councils and Tribal Administrations (IFS, 1982; Botswana Annual Report 1967).

In 1971, the earliest year for which statistics are available, the central government was responsible for the production of 29,5 percent of GDP, again indicating an important decision-making role for the central authority (IFS, 1982).

Therefore, in terms of both political-legal and fiscal criteria, Botswana at the time of independence may be considered to be a centralised unitary state organised in terms of a written constitutional document as referred to in chapter 1.

5.2 NOMENCLATURE

Reference will be made to 'Bechuanaland' or the 'Protectorate' in this study, when referring specifically to the historical Bechuanaland Protectorate between the years 1885-1966, although some historical references make mention of the 'Territory'. The people are referred to as 'Batswana', while one person is referred to as a 'Motswana'. After 1966 the country is referred to as the 'Republic of Botswana'.

Ethnic sub-divisions in their historical context are referred to in this study as 'tribes'. The ethnic sub-divisions of Botswana will be referred to with their full prefix, as distinct from texts where the prefix 'Ba' is dropped in some cases. The eight principal ethnic sub-divisions are as follows: Bamangwato; Bangwaketse; Bakwena; Batawana; Bakgatla; Bamalete; Barolong and the Batlokwa.

5.3 SCOPE, SOURCES, CIRCUMSTANTIAL FACTORS, ASSUMPTIONS AND HYPOTHESES

5.3.1 Scope

This chapter covers the period beginning in the early 1880s and ends with the advent of independence in 1966. The year 1885 is taken as the most significant year in that period, in that it was the year in which the territory that today forms the Republic of Botswana was granted Protectorate status by the British government. This event partly laid the foundation for the later creation of a centralised unitary state in a sovereign Botswana Republic.

5.3.2 Sources

A number of written sources are used in this chapter. They include historical and contemporary academic texts and official documents like Command Papers, Advisory Council Minutes, Legislative Council Official Reports, and various archival sources. The sources focus generally on political elites and their perspectives concerning a centralised administration or legislative council for the Protectorate. Oral and written material generated by these elites is also used¹.

5.3.3 Circumstantial factors

As explained in chapters 1 and 4, many factors contribute to the adoption of a particular constitutional form. The general ones which contributed to the

¹. Sir Ketumile Quett Masire, present day President of Botswana, and deputy leader of the BDP under Sir Seretse Khama during the independence negotiations, was not accessible for an interview. He is one of the few remaining pre-independence leaders.

adoption of a centralised unitary constitution in the case of Botswana are as follows:

- the nature and application of British colonial policy and historical precedents;
- attempts over the years to have Bechuanaland administered by the British South Africa Company or incorporated into the Union of South Africa or Southern Rhodesia;
- the emergence of a modernising African political elite and a nationalist sentiment in the territory;
- the desire amongst African and European elites in the Bechuanaland Protectorate to improve administrative efficiency and responsiveness and participate in centralised decision making;
- the constitutional evolution of former African colonies and the desire amongst Batswana elites to emulate these developments.

5.3.4 Assumptions

- Throughout the entire period of the Bechuanaland Protectorate's constitutional evolution, the issue of whether to adopt a centralised unitary constitution, or a federal constitution was never thoroughly debated. Throughout the history of the Bechuanaland Protectorate, from 1885 onwards, the trend was towards the centralisation of administrative control and political power, and repeated calls were made for the creation of a single legislative council. It is therefore assumed that a unitarist political culture developed amongst elites and

eventually become dominant in the Protectorate, leading to the eventual adoption of a centralised unitary constitution. The corollary of the calls for the creation of a single legislative council is that such a council could only be accommodated by a unitary constitutional form. The two notions of a single legislative council and a unitary constitutional form are not synonymous with one another but are closely related. If a federal constitutional order had been called for, it is likely that calls would also have been made for the creation of additional legislative councils coinciding either with ethnic or geographic divisions in the Protectorate.

5.3.5 Hypotheses

The following four hypotheses are made:

1. That the foundations for the centralised unitary state were laid early in the history of Botswana at the time of the establishment of Protectorate status, and that this process was promoted through successive Orders-in-Council and Proclamations issued by the High Commissioner, and through the establishment of African and White Advisory Councils, a Joint Advisory Council and a Legislative Assembly.
2. That the adoption of a centralised unitary state was the result of views held by modernising elites that nation-building should be promoted in the territory. This view prevailed over the traditionalist views of the tribal authorities and the final

independence constitution was largely a reflection of the modernising elites in the Protectorate.

3. That the various attempts over the years by the South African government and Southern Rhodesia to have the Bechuanaland Protectorate incorporated into their territories contributed to the adoption of a centralised unitary constitutional form in Botswana. When the autonomy and integrity of a territory is threatened, its people tend to consolidate and find ways and means of promoting and strengthening their autonomy. Centripetal forces tend to override centrifugal forces in these circumstances.
4. That developments in other African countries like Ghana, Uganda, Kenya and Nyasaland, the successes of nationalist movements, and the creation of single legislative councils in those countries had an important demonstration effect on the elites in Bechuanaland.

5.4 THEORETICAL SCHEME

This chapter will follow Etzioni's four-stage conceptual scheme as modified in chapter 3 above.

- i) *The pre-centralised stage* (1885-1920) corresponds with the proclamation of Protectorate status over Bechuanaland in 1885 and the period preceding the formation of a Native Advisory Council in 1919, and a European Advisory Council in 1920.

- ii) *The centralisation stage* (1921-1949) corresponds with the functioning of the Native Advisory Council (renamed African Advisory Council) and the European Advisory Council as focal points for African and European interests, respectively. The early growth of nationalist sentiment also reinforces this process, together with administrative changes in the Protectorate.
- iii) *The take-off stage* (1950-1960) corresponds with the formation of a Joint Advisory Council in 1950, the development of nationalist sentiment in other parts of Africa and the further growth of nationalist sentiment in the Protectorate.
- iv) *The termination stage* (1961-1966) corresponds with the adoption of a Legislative Council in 1961 and the process of negotiation, leading up to the adoption of a centralised unitary constitution in 1966 for an independent Botswana.

5.5 FOUNDATIONS OF THE BECHUANALAND PROTECTORATE 1885-1920 - *THE PRE-CENTRALISED STAGE*

5.5.1 The historical foundations of the centralised state

The foundations of the centralised unitary state can be traced to the early conflicts between white and black in the region. Members of the London Missionary Society (LMS) began exploring and settling in what was to become the Bechuanaland Protectorate and present-day Botswana from the early part of the nineteenth century.

Two general factors resulted in the declaration of Bechuanaland as a Protectorate in 1885 and the initiation of the centralisation process. On the one hand, the Boers from the Transvaal attempted to acquire as much of the territory as possible for farming purposes, and on the other, German activity and the founding of a settlement at Angra Pequena, in the former South West Africa, aroused fears that the Germans might join hands with the Transvaal Boers, or Portuguese or other Germans in East Africa. Throughout this period of expansion, 'the road to the north' which led to what was eventually to become Southern Rhodesia, could be cut, thus placing the Cape Colony at an economic and strategic disadvantage in its trade relations with the north.

Of the tribes living in the Protectorate at the time, there were three which were politically significant. They were the Bakwena, Bamangwato and the Bangwaketse, ruled respectively by Chiefs Setshela, Khama and Gaseitsiwe. There was also a Batswana tribal grouping outside the territory in the Transvaal, namely the Bakgatla who in 1871 fled from the Boers, settled in Bakwena territory and became a disruptive factor. The trekking of Boer families through the territory in 1873/1874 was also a disruptive factor. These events and conflicts between the tribes led in 1876 to the request of Chief Khama III for British protection against such incidents. For these reasons and as a result of the activities of the Reverend John Mackenzie of the LMS, who waged a vigorous campaign advocating that the Tswana should be protected from foreign intervention, the territory was declared a British Protectorate in January 1885 (Sillery 1965:39 et seq.).

Bechuanaland became a Protectorate in terms of Proclamation No.1 dated 30th September 1885, an event which initiated the process of consolidating a centralised authority for the Protectorate which was at the time of

independence embodied in a constitutional document.

The Proclamation stated:

in the interests of peace, order and good government it has been found necessary that Her Majesty's Sovereignty should be proclaimed over such portion of the said Protectorate ... and shall be taken to be British Territory under the name of British Bechuanaland (C.8707:2).

Shortly before this Proclamation was issued, a Report with proposals for the future administration of the Territory was produced by G. Baden-Powell, a Colonial Civil Servant, for Sir Charles Warren, Special Commissioner for Bechuanaland. It formed part of a Dispatch sent to the Secretary of State.

In his Report, Baden-Powell expressed his belief that the main object of administration in the Protectorate would be

the maintenance of the Queen's peace against both external aggression and internal disturbance, with a view to the welfare and progress of all inhabitants of the country, whether of European or native race ... (C.4588:59).

With regard to a future administrative structure, Baden-Powell wrote,

it appears to me that a uniform administration and fiscal system may be inaugurated which, at all events in the near future, would be self supporting. But such a system must be sufficiently

elastic to cover the widely-differing present needs of the various districts of Bechuanaland (C.4588:69).

Baden-Powell, according to his Report, foresaw that, in what was to become the Bechuanaland Protectorate, the chiefs would retain jurisdiction over their respective tribes, but the colonial authorities would assume responsibility for matters concerning more particularly the European population. This early Report formed the basis of the future administrative system for the Protectorate.

An Order-in-Council was issued on 9 May 1891, granting the High Commissioner 'all powers and jurisdiction' over the territory (C.8707:1). In terms of this Order-in-Council, the High Commissioner was empowered to appoint either Deputy Commissioners, Resident Commissioners, Assistant Commissioners, or Judges, Magistrates, or other officers, and could, from time to time by Proclamation, provide for the administration of justice, the raising of revenue, and generally for peace, order and good government (C.8707:1-2).

The High Commissioner was, however, required to,

respect any native laws or customs by which the civil relations of any native Chiefs, tribes or populations under Her Majesty's protection are now regulated, except so far as the same may be incompatible with the due exercise of Her Majesty's power and jurisdiction (C.8707:2).

In terms of this Order-in-Council, the jurisdiction of the High Commissioner should, as far as possible, be confined to the European population. The powers

of the High Commissioner were thus better defined than previously, and also broadened. A central administrator could thus delegate powers to a number of subordinates, but retract the same powers.

It should again be noted at this point that since early colonial rule, the Bechuanaland Protectorate has been inhabited by eight principal tribes of which the Bamangwato was the largest, making up one-third of the total population of the territory. Besides the main tribes mentioned above, there are a number of alien Africans resident in the Protectorate, as well as a small white population. From the early part of the nineteenth century, the main tribal groupings enjoyed a great deal of autonomy, as no centralised tribal authority for the Protectorate existed. The territory was thus highly fragmented in its early stages of development.

Picard describes this early relationship between the colonial administration and the 'tribes' as having two dimensions, namely that of external protection and that of parallel rule, also referred to as 'indirect rule'. The European administration would exist to regulate the affairs of traders, missionaries and other Europeans, whereas the Magistrate (appointed in terms of the 1891 Order-in-Council) would mediate between the chiefs and the outside world (1984:11). However, Picard and Stevens note that this administrative practice was broken almost from the moment of its implementation, in that British officials intervened on a number of occasions in issues affecting the social, political and economic life of the Tswana, in order to entrench and increase British authority over the Protectorate (Picard 1984:11; Stevens 1967:125). These breaches of administrative practice laid the foundations for increasing control over the territory as a whole.

According to Gunderson, much of the subject matter of legislative proclamations, up until about 1910, concerned law and order issues, personnel matters, judicial administration, taxation, and the control of liquor, arms and livestock. Law and order activities and revenue activities disrupted internal social order, which in turn extended the need for greater colonial administrative activity, as well as the resources to finance it. This, he says, contributed towards the enhancement of a centralised authority at the expense of traditional authority (1971:143).

5.6 THE PERIOD 1921-1950 - *THE CENTRALISATION STAGE*

5.6.1 Administrative reforms

In a report presented in 1933 by the Secretary of State for Dominion Affairs to the British Parliament, Sir Alan Pim (author of the report) describes the organisation of the Bechuana tribes as being very different from that in the High Commission Territories of Basutoland and Swaziland. In the latter two territories, 'there is a national unity among the Natives, symbolized by a single Paramount Chief, who with his general and privy councils speaks and acts for the whole tribe' (Cmd.4368:9). In Bechuanaland, he continued, all the tribes are, 'entirely independent of one another, and there is no Paramount Chief or other symbol of national unity' (Cmd.4368:9).

According to Hailey, the form of 'parallel rule' which was applied in Bechuanaland meant that the colonial authorities showed the maximum regard for the customary authority of the chiefs, but failed to take account of the unprogressive character of their rule. It meant too that they had to face the

consequences of a low standard of responsibility shown by some of the traditional leaders (1957:272).

An Order-in-Council was issued in 1934 partly to address some of the problems mentioned by Pim and Hailey. The Reforms instituted under this Order-in-Council had the effect of assigning to the 'Native Authorities' a defined position within the executive organisation of the Protectorate as well as preventing the misuse of power by the chiefs. As mentioned above, the original objective of British jurisdiction was to protect Bechuanaland from encroachment. However, by the 1930s, the British government began to view itself not only as a protecting power, but as an administration responsible for the improvement of standards of living amongst the African population as a whole.

The 1934 Order-in-Council was later challenged in a Special Court of the Protectorate, by chiefs of the Bangwato and the Bangwaketse. These chiefs believed that their internal sovereignty was being infringed by this Order-in-Council. In a decision handed down by the Court in *Tshekedi Khama and Another v. The High Commissioner*, it was confirmed that the British government had 'unfettered and unlimited power to legislate for the government and administration of justice among the tribes of the Bechuanaland Protectorate ... '(Stevens 1967:132).

The appointment of a commission headed by Sir Alan Pim, to investigate the 'Financial and Economic Position of the Bechuanaland Protectorate', was further confirmation of the British government's view that it was responsible for the territory as a whole. The said appointment represented a move away from the understanding that the population was to be viewed as eight separate

and autonomous 'tribal' groupings, to a more holistic view of the population and the development of the territory.

5.6.2 African nationalism as a centralising force

Besides administrative reforms introduced in the 1930s which were of external origin, and which partly laid the foundations for a centralised system of government, the nationalist movement also played its part. However, the nationalist movement was never as strong as in other former African colonies. The nature of Bechuanaland society, as described by Pim above, is perhaps the most important factor explaining why the territory never boasted as strong a nationalist movement as did other African countries. Nevertheless, it did play a role in the centralisation process in the territory.

Parsons argues that modern nationalism in the territory can be traced to at least the 1920s (Picard 1985:13). In a limited way this movement contributed towards the creation of centralised political institutions in Botswana. Parson [sic] defines the Bechuanaland type of nationalism as, 'the struggle of socio-political groups to protect or extend their identity, autonomy, and independence' (1984:26). Various manifestations of this type of nationalism will be referred to below.

Parsons [sic] points to two branches of an intellectual nationalist movement. The first, which dates from the 1920s, he calls 'progressive chieftaincy' exemplified by Tshekedi Khama, Bathoen II and others (Picard 1985:13). The chiefs represented in this branch were educated men who

held progressive ideas of economic development ... and of

bureaucratizing their administrative machinery They also believed in their own kind of nationalism by presenting a more or less united front with the colonial authorities, appealing to the precedent of their 'fathers' who had gone in united delegation to the Colonial Office in London in 1895 (Picard 1985:13-14).

The latter delegation refers to a visit by Chiefs Khama I, Bathoen I and Lentswe to the Colonial Secretary, Joseph Chamberlain, in London in 1895, to protest against the possible transfer of the administration of their territories to the British South Africa Company, which at the time administered Southern Rhodesia. The transfer of these territories never took place.

Batswana chiefs also protested against the possible inclusion of the Protectorate in terms of the 1909 draft Act for the creation of the Union of South Africa. The chiefs were assured that the transfer of the territory would not take place in the immediate future, but that it would take place some day (Stevens 1967:126).

This branch of African nationalism was also manifested in the Advisory Councils in the 1940s and 1950s. Chief Tshekedi Khama and others expressed their opposition in this forum, to the possible incorporation of the Protectorate into the Union of South Africa. As one example and manifestation of this branch of African nationalism, in 1946 Chiefs Tshekedi Khama, Regent of the Bamangwato, and Bathoen II of the Bangwaketse, together with four other chiefs, submitted a Memorandum to the High Commissioner for transmission to the Secretary of State, to be placed before the Trusteeship Committee of the United Nations. In the Memorandum, the chiefs reminded the Resident

Commissioner that in the past they had never failed to record their protest against any suggestion for the inclusion of the Bechuanaland Protectorate into the Union of South Africa. The Memorandum continued that the chiefs were deeply concerned about what they referred to as 'our country' and its potential for industrial and agricultural development. They felt that for future development the Protectorate should have an unimpeded trade route through the former South West Africa to the Atlantic. At the time, the railway line running through the Protectorate was controlled by the former Rhodesian and South African Railways. Their appeal, therefore, was that South West Africa should not be made an integral part of South Africa, to facilitate a possible transport route to the Atlantic and to enable Hereros and other people, who had taken up refuge in the Bechuanaland Protectorate as a result of fear of the Union's 'Native Policy', to return to South West Africa. The South African mandate over the territory, they felt, should be revoked by the United Nations Trusteeship Committee and given to Britain or the United Nations Organisation (Unisa Archives. Z.K. Matthews Collection. E11-E3.81). ✓

The second branch, Parsons saw as intellectual democratic nationalism. It consisted of men like Simon Ratshosa (1883-1939) and Dr S.M. Molema (1891-1965). These men differed little in terms of their background and education from the progressive chiefs, generally coming from aristocratic backgrounds with sound education but, because they were not in positions of power and influence within the traditional authority, they gravitated towards a form of bourgeois nationalism (Picard 1985:14).

Writing between the years 1929-1931, Ratshosa for example, called for a united Bechuanaland Protectorate ruled with the consent and advice of the national intelligentsia as the representatives of the people. Parsons points out that,

although Ratshosa advocated the creation of a more centralised state, he actually wanted colonial administration to be stronger. To achieve this end Rathosa wanted a National Council established in which, 'a party of enlightened natives' would have a strong say, so that the 'unity and preservation of Bechuanaland Protectorate will ever increase'. He moreover called for the democratisation of local government and the checking of the powers of the chiefs (Parsons 1974:450-452). This branch of nationalism, Parsons maintains, can be linked intellectually with that espoused by the Bechuanaland Democratic Party formed by Seretse Khama in 1962 (Picard 1985:14).

5.6.3 The Advisory Councils

In 1919 the centralisation of the administration of the Protectorate was taken a step further with the creation of a Native Advisory Council, which in 1940 became the African Advisory Council. Membership included representatives from each tribe, and the ruling chief from each had to be included. Chief Khama and the Bamangwato did not attend as full members until 1940. The function of the Council was to discuss with the Resident Commissioner all matters affecting African interests which members wished to put forward. This Council was the first administrative structure designed to co-ordinate solely tribal matters.

The European Advisory Council was established in 1920 and consisted of six members elected by Europeans from the six areas into which the Protectorate was divided. The function of the Council, like that of the African Advisory Council, was to advise the Resident Commissioner on matters affecting Europeans in the Protectorate.

The two branches of African nationalism, which have contributed towards the creation of a centralised unitary state, have manifested themselves in statements made from time to time in the Advisory Councils.

5.6.4 African Advisory Council

The main thrust for the formation of a Legislative Council and a more centralised form of administration in the Protectorate, in which Africans might participate, came from the African Advisory Council. The formation of a Legislative Council for the Bechuanaland Protectorate was discussed periodically in the African Advisory Council from about 1944 onwards.

An early example of this occurred in 1946, when a Councillor spoke out against the purely advisory nature of the Council. He held:

At present we are interested onlookers and, if the present policy is not changed to that of which we shall be active partisans, it will not be long before we are disinterested onlookers. We are getting more and more dissatisfied with the policy of having everything thought out and done for us. The continuance of such a policy cannot perpetuate our status of 'children' and militates against our aspirations to become 'grown ups'[sic] (Minutes of the AAC, 26th Session, 1946:57).

In 1949 an appeal was made by several members of the African Advisory Council, including Chief Bathoen II of the Bangwaketse, for a body which could consolidate the District Commissioners' Conference, the European Advisory Council and the African Advisory Council into a central organ of government.

The African Advisory Council, it was claimed, had lost the confidence of its members. Like the European Advisory Council (referred to below), it was claimed that delays were incurred by having to circulate matters through three Councils, and responses were then sometimes not forthcoming.

In 1950 a resolution was passed in this Council stating that: 'We submit that it is now time that consideration is given to the formation of a Legislative Council for the Bechuanaland Protectorate' (Minutes of the AAC, 15-21 June 1950:81). Despite the establishment of a Joint Advisory Council in 1950, the issue of the establishment of a Legislative Council for the territory was again debated in 1952 in the African Advisory Council. The first speaker in this debate, Chief Bathoen II, maintained that requests put to the African Advisory Council over the years, '[were] not answered for a very long time and sometimes we are given promises which are never fulfilled' (Minutes of the AAC, 14-21 October, 1952:148). He further argued that members of the Council did not have sufficient opportunity or time to consider Government Proclamations before they were implemented. Finally, Chief Bathoen II felt that the Bechuanaland Protectorate was lagging behind other British colonies which already had Legislative Councils.

Another member of the Bangwaketse, Councillor M.L. Kgasa believed that a Legislative Council would resolve several issues. It would,

fulfil the too often unpopular but reasonable dictum [sic] that 'taxation of a people should be followed up by representation of the people in the framing of laws'... a Legislative Council would dispel the deep seated belief of the average Motswana that all Europeans who come into the territory have come to take away the

land and our cattle. This belief leads to mistrust and a Legislative Council would in addition remove mistrust and bring about goodwill, co-operation, benevolence and unity in diversity (Minutes of the AAC, 14-21 October 1952:150).

Councillor Lethole Mosielele of the Bakwena expressed his view that: 'A Legislative Council [will] afford the ordinary man to take a share in the framing of the laws which govern them' (Minutes of the AAC, 14-21 October 1952:151).

Councillor Tshekedi Khama claimed that of all the British Protectorates and Crown Colonies, only the three High Commission Territories were without a Legislative Council. He continued that:

The unexplained delay in the creation of a Legislative Council ... breeds a suspicion in the minds of many people ... that this delay has a deeper meaning than we realise. Some critics feel that the question continues to be shelved in order to placate the Government of the Union of South Africa ... we feel that a Legislative Council is in fact one of the protections necessary against any aggressive political measures which the neighbouring government may direct against us. It is only through a properly constituted Council that the true feelings of the people can be expressed ... demands will sooner or later be made by the Prime Minister of the Union of South Africa for the inclusion of the Protectorates into the Union of South Africa (Minutes of the AAC, 14-21 October 1952:153).

5.6.5 European Advisory Council

During the early years of the European Advisory Council, debate on constitutional issues tended to focus on access to land and the Protectorate's incorporation into the Union of South Africa. For example, at the sixth meeting of the European Advisory Council held in 1926, a resolution was passed stating in part that, 'it is the unanimous desire of the European residents in the Tuli, Gaborones and Lobatsi blocks that their settlement be incorporated in the Union of South Africa ...' (Minutes of the EAC, 6th meeting, 1926:39). This attitude towards incorporation contributed towards the consolidation of the African opposition against incorporation.

At a meeting of the Council in 1936 the focus began to shift and reservations were expressed mainly in response to practical realities, as to the status of the Council. These reservations were similar to those expressed in the African Advisory Council as referred to above. It was felt that the advice of members of the Council was seldom asked for, and then, seldom followed. The request then to the High Commissioner was to reconsider the status of the Council. At a meeting later that year, co-operation between the Protectorate and neighbouring states was discussed. A view was expressed that the African population should be consulted on this issue (Minutes of the EAC, 21st meeting 1936).

As time progressed, the opinions of the members of the European Advisory Council began to coincide more closely with African elitist opinion where constitutional advances for the Protectorate were concerned. It was in 1950 that a motion was proposed in the European Advisory Council to establish a Joint Advisory Council, which would include the entire European Advisory

Council with the Resident Commissioner as President (Minutes of the EAC, 6-10 March 1950).

5.7 ESTABLISHMENT OF A LEGISLATIVE COUNCIL 1950-1961 - *THE TAKE-OFF STAGE*

5.7.1 The nationalist movement

The nationalist movement and the advent of a centralised administration were given further impetus by two main events in 1948. While studying in England, Seretse Khama, heir to the chieftaincy of the Bamangwato, married a white English woman. This event resulted in hostility from Seretse Khama's uncle and regent, Chief Tshekedi Khama, and caused division amongst tribesmen. In the same year, a new South African government began implementing its policy of strict racial segregation or what was referred to as apartheid. The marriage was vehemently denounced in South Africa and the South African government renewed its calls for the High Commission Territories (at the time Bechuanaland, Basutoland and Swaziland) to be placed under its jurisdiction.

The British government responded by prohibiting Khama from entering Bechuanaland for a period of five years and barring him from assuming the chieftaincy of his tribe. It began also to move in the direction of self-government and independence for the territory rather than incorporation. The establishment of the Joint Advisory Council in 1951 is an early indication of this shift in policy direction.

Independence according to Parson [sic], became the accepted future direction in Bechuanaland for two reasons. First, there was a deep hostility in Bechuanaland towards incorporation into South Africa, and secondly, other

African nationalist leaders placed pressure on Britain to prevent the extension of apartheid to the Protectorate (1984:30). This was a manifestation of the first branch of nationalism supporting increased colonial rule, as referred to above.

In 1956 Seretse Khama was allowed to return to Bechuanaland on condition that neither he nor his family would be able to claim the chieftaincy. Khama assumed the vice-chairmanship of the Bamangwato Tribal Council and from that time on he took a leading role in domestic politics and became a member of both the African Advisory Council, the Joint Advisory Council and later the Legislative Council. As a member of the Legislative Council, he was instrumental in forming the Bechuanaland Democratic Party (BDP), the third political party to be established before independence. The first party to be formed was the Bechuanaland Protectorate Federal Party, in 1959, followed by the Bechuanaland Peoples Party (BPP) in 1960, whose leaders Matante and Mpho were members of the South African Pan-Africanist Congress and the African National Congress, respectively. Through these leaders, the movements in question influenced Bechuanaland. The BPP attacked the institution of chieftainship and colonialism and called for independence for the Protectorate and the exclusion of the white population from constitutional negotiations.

The BDP was formed as a pragmatic alternative to the BPP and made a conscious attempt to appeal across tribal lines to traditionalist sentiment. Khama also defended the rights of the white population to participate in constitutional negotiations, but in 1963 rejected the demands of those living in the Tati District for independence. He stated that the fragmentation of the Protectorate would not be permitted.

Seretse Khama drew much of his strength from his membership of the Bamangwato tribe of which he was a member, and which comprised about thirty percent of the total population. Not being a chief, he was removed from the duties attached to this office, which allowed him to become the modernising leader of a broadly-based political party, supporting the territorial integrity of the Protectorate (Stevens 1967:144-148). Removed as he was from traditionalist matters, his acceptance of a unitary Bechuanaland was facilitated. Traditionalist elements tended, as pointed out below, to support alternative decentralised constitutional proposals.

5.7.2 European Advisory Council

The matter of political advancement for the territory was taken further in 1953, in the European Advisory Council, when a motion was proposed by Mr L.S. Glover: 'That Council take stock of the present economic outlook in the Territory with a view to obtaining evidence of our ability to attain Legislative Council status' (Minutes of the EAC, 17-19 August 1953:28).

The proposer of the motion argued for Legislative Council status on two grounds. He felt that government was too remote from the people. The Protectorate was, in fact, governed from London 6 000 miles away, via the High Commissioner and Resident Commissioner from Mafeking outside the borders of the Protectorate. There was a lack of cohesion in the administrative structures for the Protectorate. Moreover, the High Commissioner for the Bechuanaland Protectorate was also High Commissioner to the Union of South Africa. The two roles of High Commissioner, he felt, were incompatible, in having to consider the interests of a 'poor dependency and wealthy dominion ...' (Minutes of the EAC, 17-19 August 1953:29).

The proposer of the motion further argued that problems that the Protectorate would sooner or later face must be resolved in a united front, by which he meant that Africans and Europeans should be at one when addressing issues relative to the Protectorate as a whole. Legislative Council status would afford this opportunity. However, he qualified his view by stating that the vote for this Council would, 'only go to the politically mature men who want to take their full share of citizenship, accepting the full obligations of taxation, morality and responsibility' (Minutes of the EAC, 17-19 August 1953:31).

5.7.3 African Advisory Council

In 1958 the issue of establishing a Legislative Council for the Bechuanaland Protectorate was again debated intensively in the African Advisory Council. Speaking to a motion in this regard, proposed by the Bamangwato representatives, Mr Seretse Khama, who can be identified with the second branch of African nationalism referred to above, emphasised the need for co-operation between the African people, the Europeans and the Administration. The purpose of a Legislative Council would then be to consider,

matters which relate to the Territory as a whole I think our guiding principle should be the type of political institution which is appreciated throughout the world because it shows fairness and justice and shows co-operation between Government and the people (Minutes of the AAC, 20-23 May 1958:60-61).

Mr Tshekedi Khama again spoke on the necessity of a Legislative Council for Bechuanaland in this debate, justifying the need for such a body for the

Protectorate by the progress already made in other African colonies towards obtaining Legislative Councils. Nevertheless, it was suggested by several speakers in the debate that the establishment of a Legislative Council would deprive the chiefs of their power bases.

5.7.4 The formation of the Joint Advisory Council

Although the Joint Advisory Council was formed in 1950, debate on the further constitutional development of the Protectorate only really commenced in that Council in 1958. At the seventh session of the Joint Advisory Council, held in April of that year, a resolution was passed stating that, 'in the opinion of this Council the time has come when a Legislative Council should be formed and empowered to assist in the Government of the Territory' (Minutes of the JAC, 14-15 April 1958:76).

Mr Russell England, an elected member of the Council, speaking in support of the motion, felt that the granting of a Legislative Council to the territory, would bind it together 'in a common loyalty and desire' (Minutes of the JAC, 14-15 April 1958:76-77). He continued that:

We desire ... to develop our Territory in accordance with the true unfettered principles of the British Peoples. To assist in the achievement of this it is necessary that there should be a body of standing that feels itself bound to represent the wishes of the people to Government It is our firm belief that only by granting the peoples of the Territory a reasonable participation in government and by giving the Territory its own Head of State, directly responsible to the Secretary of State,

that satisfactory human relationships can be maintained, and proper development take place (Minutes of the JAC, 14-15 April 1958:76-77).

Mr Tshekedi Khama, in responding to this motion, stated his belief that the people of the Protectorate had sufficient training in the European, African and Joint Advisory Councils to participate in a Legislative Council. He further maintained that there was a need to promote national unity which would bridge racial unities. There was already an atmosphere of racial harmony in the Protectorate which he felt could be improved and consolidated.

Bechuanaland, he said, had a strong separate tribal element, and separate systems of land ownership and occupation. The people of Bechuanaland thus,

have to face the issue as to what degree it is to be a federal or unitary state, one nation or two, and if as some of us wish, there is to be one nation, then 'there is need to fashion a common citizenship so as to create a bond between race and race and tribe and tribe' (Minutes of the JAC, 14-15 April 1958:80).

Tshekedi Khama saw a federal system in the context of the Bechuanaland Protectorate as being divisive. He also remarked in response to this motion that the Protectorate, until that time, had been governed by numerous bits of legislation issued in the form of proclamations, which he felt might be relegated to wasted energy. A national political policy was necessary for Bechuanaland. Finally, he felt that a recognised political body composed of all the races in the territory could speak with a united voice as to its ultimate destiny, either as a part of the Union of South Africa, as a member

of the Central African Federation, or as an independent state (Minutes of the JAC, 14-15 April 1958:80-81).

Chief Kebalepile Montshioa spoke in the same debate in favour of the establishment of a Legislative Council. His concern was with the racial composition of the new Council. He posed the question as to how many members there would be from the European side, and how many from the African side (Minutes of the JAC, 14-15 April 1958:81). With regard to the racial composition of a Council between Africans and whites, he felt that 'this sort of semi-official apartheid must be done away with' (Minutes of the JAC, 14-15 April 1958:81).

Mr J.G. Haskins also pleaded for a Legislative Council, as he felt that a 'tremendous amount of repetitive work is taking place' (Minutes of the JAC, 14-15 April 1958:83). He was referring to the three Councils, the African, European and Joint Advisory Council, having to consider similar issues.

Another member, Mr W.H. Turnbull felt that Bechuanaland was 'growing up' and its destiny was more closely linked with the Colonial Office than to the Commonwealth Relations Office. He maintained that the territory had, had sixty years of adolescence and was now ready for adulthood. This he expanded upon, seeing Bechuanaland as deserving a larger share in the management of its own affairs with a Governor, who would represent the British monarch, as head of the territory. He saw the destiny of Bechuanaland as neither with South Africa nor with the Central African Federation (Minutes of the JAC, 14-15 April 1958:84).

Dr S.M. Molema, identified above as a member of the second branch of African

nationalism, drew a comparison between the level of development of the African in Bechuanaland and those in territories like Uganda, Tanganyika, Nigeria, Ghana and the Central African Federation, and their attainment of Legislative Councils. He posed the question as to why Bechuanaland could not have a proper Legislative Council, as the Joint Advisory Council had in effect already been legislating on many issues. He further raised the unification issue which could involve either the Central African Federation or South Africa, stating his belief that if the territory already had a Legislative Council and was destined to become part of a neighbouring territory, it would be able to play a greater role in that territory than it already fulfilled.

Mr Seretse Khama, later a Prime Minister and President of the territory, compared the constitutional evolution of Bechuanaland with other African countries. He mentioned the need to de-emphasise race in the composition of a Legislative Council. He continued

we have got to consider ourselves a community ... we have got to have general legislation to cover the whole Territory, even though we can have special local legislation to satisfy those who wish to have that type of legislation the most important thing is that legislation ... should be rather on the general side and it is only when we have a council of that nature that we can discriminate as to which legislation or order should apply to a specified area and which should be of general application (Minutes of the JAC, 14-15 April 1958:88).

At its 9th Session held in April 1959, the Resident Commissioner informed the Council that the Secretary of State would be happy to consider proposals for

the establishment of a Legislative Council for the Protectorate. The Resident Commissioner was requested to formulate and submit proposals to the High Commissioner, after consultation with the Joint Advisory Council and interested persons in the Protectorate.

5.7.5 The Joint Advisory Council Constitutional Committee Report

The Constitutional Committee consisted of four African and four European unofficial (non-elected) members of the Joint Advisory Council, and four official Government members. Dr S.M. Molema and Mr Seretse Khama, who were associated with the second branch of African nationalism referred to above, were included as unofficial members.

The introduction to the Committee's Report stated that the main concern was to formulate constitutional proposals which were, 'progressive yet not of such a nature as to be likely to prejudice or break down anything of value in the harmonious life of the Territory ... '(JAC, Constitutional Committee Report, 8 October 1959:13).

The Report explained that the problem of accommodating traditional political structures under a single legislative authority had exercised the minds of the Committee members. In this regard the Committee said that:

The wishes of the small number of politically mature African inhabitants of the Territory should be balanced against the unexpressed and often inchoate views of the vast majority of the African inhabitants, whose entire mode and manner of life is related to and dependent upon the tribal structure. Any radical

changes which swept away familiar institutions without substituting anything both better and capable of being understood by them would be abhorrent to the majority of African peasants (JAC, Constitutional Committee Report, 8 October 1959:3).

The Committee relied on principles gathered from the experience of other territories with more developed institutions. The Report mentioned that in one respect Bechuanaland was different from other territories, in that consideration was now being given to the establishment of a Legislative Council, rather than the improvement of a presently established Council as in other territories. The Council, moreover, should have a majority of elected representatives: it should be a representative Council. Only a representative Council would command the support of the general public. A further tendency in the Report was towards a common voters' roll rather than communal representation.

The Report said that communal representation might 'stereotype or harden racial divisions', whereas a common roll would encourage members to think in terms of the Territory as a whole (JAC, Constitutional Committee Report, 8 October 1959:13). There was a strong nation-building view amongst the Committee members. However, the Committee believed that there was no prospect of a 'national outlook or consciousness cutting across racial divisions where any racial group in the Territory feels that its interests as a group are adequately represented or secured' (JAC, Constitutional Committee Report 8 October 1959:14).

To avoid the possibility of a smaller tribal grouping being excluded from having representation in the Legislative Council, it was proposed that the

African Advisory Council become an electoral college for the election of Africans to the Council.

In summary then, the Committee tended towards a universally elected, centralised governing authority for the Protectorate, but was obliged to accommodate the deeply traditional element in Bechuanaland. A centralised single authority was viewed as being in keeping with the constitutional development trends in other parts of Africa, that is the adoption of unitary constitutional forms.

The Committee was empowered to consider proposals from interested persons. Only one memorandum which was relevant to the Constitutional Committee was received from a member of the public, Mr L.D. Raditladi. The memorandum was written on behalf of the Bechuanaland Protectorate Federal Party formed in 1959. Mr Raditladi appealed for a democratic party system and a federation embracing the eight tribal administrations. His reasons for preferring a federal system to a unitary system were not well articulated. Nevertheless, he felt that a greater degree of participation by elected representatives of the tribal groupings in the central administration was necessary (Memorandum of Suggestions, 1959). The Federal Party did not survive very long after its formation nor did it enjoy a large membership base. Supporters of this party were also alienated by Raditladi's preference for tribal authorities (Tlou et.al.1995:178). The failure of this party would suggest a limited federalist sentiment in the territory at the time.

Tlou et al. maintain that the JAC was in fact cowed into accepting the constitutional recommendations en bloc which were modelled along the lines of a small British Caribbean dependency. The constitutional committee which had

in fact drafted the report, had been 'hi-jacked by its "official" members' (1995:180).

5.8 THE INDEPENDENCE PHASE 1961-1966 - *THE TERMINATION STAGE*

5.8.1 The 1961 Constitution

The constitution drafted in terms of this Committee's recommendations came into effect in 1961 and provided for a single legislature consisting of thirty-one to thirty-five members, twenty-one of whom were elected. Ten Africans were elected indirectly through an African Council. Ten Europeans and one Asian were elected on a constituency basis. The Constitutional Committee believed that communal or racial representation would retain the confidence of inhabitants of the territory and ensure that all racial groups would be adequately represented. With the implementation of this constitution, the African Advisory Council, the European Advisory Council and the Joint Advisory Council were abolished.

The establishment of a centralised unitary state with a popularly elected legislature was taken a step further with the drafting, in 1963, of a further set of constitutional proposals for advancing internal self-government in the Protectorate. In August 1963, the Resident Commissioner began consultations for a revision of the constitution. The only debate which came near to considering a decentralised form of government was that concerning the future position of the chiefs in the government. The Responsible Government constitution which was drafted provided for the executive arm of government to be drawn from an elected legislative chamber. The only recognition given to tribal interests was the establishment of a House of Chiefs whose function

it would be to examine certain bills before their introduction to the Legislative Assembly, and to make representations to the executive with regard to matters concerning the tribes and tribal organisations.

One of the proposals put forward for the accommodation of the chiefs, one that could have resulted in a decentralised form of government, was a proposal to establish a federal system in which the tribal administrations would function as regional governments and be represented equally in an upper house of the legislature. This alternative was, however, rejected: regional governments were considered unsuitable for a country with a small and relatively homogeneous population and limited resources; the system would be expensive; could not be applied in certain areas; and would interfere with the growth of national unity and the development of an effective central government (Proctor 1968:61-62).

With regard to tribal institutions, the Resident Commissioner, in his opening address to the Legislative Council in August 1964, referred to the previous constitutional deliberations, and the role of traditional structures under the new Constitution. He referred, in particular, to the provision of essential local services which had in the past been the responsibility of traditional structures. He said that these structures should expand and meet the needs of the entire community, which could not be left to a somewhat narrowly based tribal administration which, by definition, was only concerned with one section of the community. Nevertheless, for many years the tribal administrations, headed by the chiefs, had loyally and valiantly sought to meet a number of local needs, especially in primary education; consequently it would be possible to build on the foundations which they had laid to evolve a fully representative, non-racial and responsible system of local government

which would retain the best features of the existing system (Legislative Council Official Report, 24-28 August 1964:3).

The new Constitution became effective on 30 January 1965. A general election was held on 1 March 1965. The BDP won twenty-eight of the thirty-one elected seats and its leader, Seretse Khama, was named Prime Minister.

In the opening address to the new Legislative Assembly, Her Majesty's Commissioner, Sir Peter Fawcus, said that it was

the aim of the Government to promote the gradual but sure evolution of a fully unified state without, however, unduly forcing the pace at which tribal institutions are integrated in the national policy ... (Legislative Assembly Official Report, 23-26 March 1965:3).

Once again this highlights one of the tensions in contemporary society over constitutional advancement, that is the struggle between the modernising elite and the traditionalists.

The Prime Minister, Seretse Khama, in a statement made in July 1965 referring to this issue, said that Bechuanaland was no less 'bedevilled' by differences of race, tribe, language and political opinion than other countries. The territory was moreover bedevilled by the search for power by irresponsible individuals and group interests which tended to fragment society. The goal therefore was to build a unified nation in the country (*The Star*, 12 July 1965). The implication was that this could only be done through instituting a single central authority.

In a subsequent meeting of the Legislative Assembly, Prime Minister Khama presented a proposal for an independence constitution. He emphasised that the existing constitution would lead naturally to independence, and there was no need for most of the principles embodied in the constitution he put forward, to be re-considered. In subsequent debates in the Legislative Assembly, it was claimed by opposition members that the government did not have a mandate from the people to proceed in implementing an independence constitution. Another source of opposition to the proposed constitution came from the chiefs.

In a confidential letter dated 30 December 1965, addressed to the Resident Commissioner, four chiefs listed their reservations about the proposed constitution. They maintained that in terms of the Jurisdiction Act 1890, each chief was as independent as could be in practice. In the 1963 constitutional talks, the major issues affecting the chiefs and the tribes had not been the subject of discussion. Issues like tribal boundaries, mineral rights, the independence constitution, what powers the tribes and chiefs would ultimately surrender to the central government and what powers they would retain as autonomous entities, 'that means the issue as to whether the final Constitution of Bechuanaland should be Federal or Unitary was never discussed' (Confidential Memorandum, 5 February 1966). Their appeal was for consultation to take place with all whose interests were affected. They continued that the autonomy of the different tribal chiefdoms could be increased or diminished through consultation, and it was for the chiefs and tribes to decide whether they wanted a federal or unitary constitution. They maintained that the 1965 election was about who was to be the leader of the Protectorate, and the greatest degree of support was in favour of Seretse Khama of the Bamangwato Tribe.

The chiefs called for a constitutional conference to be held to discuss issues like whether the final constitution should be federal or unitary and what powers and rights should be surrendered to a central government and what retained. They proposed that the decisions reached should then form the subject of a discussion between a Botswana constitutional delegation and the British government.

Tlou, an authority on the history of Botswana maintains that the approach to constitution drafting in the territory was driven by the belief that the powers of the chiefs needed to be diminished, suggesting that the second branch, namely intellectual democratic nationalism ultimately prevailed (Personal interview. September 1993). Hence the opposition from the chiefs.

5.8.2 Opposition to the Independence Constitution

In February 1966, shortly before independence, another Confidential Memoranda was submitted to the Bechuanaland Independence Conference held in London, by the Bechuanaland Opposition, which had previously rejected the draft independence constitution. It gives a further insight into the factors contributing towards the adoption of a centralised unitary constitution at the time of independence, from the perspective of a group with a relatively small following in the territory.

The Memorandum complained about a lack of consultation and that the 1961 constitution was a fake document imposed upon the people of Bechuanaland without proper consultation. It voiced the opinion that the Protection terms reached in 1885 had been violated. Three reasons for this violation were listed: the handing over of British Bechuanaland to the Cape Colony in 1895;

the establishment in 1920 of a European Advisory Council; and the formation in 1950 of a Joint Advisory Council without the people of Bechuanaland being consulted. At the same time, the powers of the 'Principalities' were reduced, without consultations with the chiefs and the people. This Memorandum similarly argued that the people of Bechuanaland and the chiefs had not been consulted on the all-important issue regarding constitutional change and the attainment of independence (Confidential Memorandum, 5 February 1966). These alleged violations were simply dismissed by the Independence Conference, as the BDP was seen to be the legitimate representative of the views of the general population of the territory.

At the Bechuanaland Independence Conference, held in London on 14 February 1966, the broad provisions of the 1963 Constitution were adopted in the final Independence Constitution. On 30 September 1966 Botswana became a sovereign centralised constitutional unitary state.

5.9 SUMMARY AND CONCLUSION

The early colonisation process in the territory laid the foundations for the later centralised unitary state. The British government was requested by Khama III to protect the inhabitants of the territory against internecine conflict and invasions from across its borders. To fulfil the commitment to provide protection, administrative structures had to be created. Resources were limited and the tendency was to create small centralised administrative structures. This led to the presumption that the Bechuanaland Protectorate was one administrative entity, despite the recognition in successive Orders-in-Council of its traditional and ethnic diversity and the doctrines of indirect and parallel rule.

The need for consultation with the local inhabitants of the Protectorate resulted in the creation of Advisory Councils for the African ethnic groups and the white group. The creation of separate councils followed the early British colonial doctrine of parallel rule, according to which African and white population groups were administered separately. As African and white interests coincided more closely, members of those councils began to question the impracticability of having parallel councils operating in the same territory. Moves were begun to create a joint council for the Protectorate, which eventually developed into a single Legislative Assembly and the Parliament of an independent state. A unitarist political culture developed through this process. This proves the first hypothesis made above.

The dominance of two leaders in particular had a marked effect on the course of the Protectorate's constitutional evolution. Tshekedi Khama played a very important modernising role up until the time of his death in 1959. Thereafter, his nephew, Seretse Khama, played an equally modernising and unifying role, facilitated both by his membership of the Bamangwatho, and his non-involvement in tribal affairs. His brand of intellectual democratic nationalism ultimately prevailed. This proves the second hypothesis made.

Besides the tendency towards increasing administrative and legislative centralisation, additional reinforcing factors which might be associated with the first brand of nationalism, also contributed to this process. Attempts at incorporation by neighbours, as well as the desire by members of the white population within the territory to be incorporated into neighbouring territories, led to opposing centrifugal and centripetal forces. The prospect of being incorporated into a neighbouring territory constituted a centrifugal force amongst some of the white population, which in turn resulted in a

countervailing centripetal force amongst the African population of the Protectorate. Legal provisions in South African constitutional law for the incorporation of neighbouring territories were only dropped in 1961. The African population feared the implications of incorporation into a neighbouring white ruled territory, and responded by attempting to strengthen a single internal legislative structure. They had appealed as early as the 1930s for a joint advisory council for the Protectorate.

This appeal was buttressed by a modernising African elite, conscious of developments in other former colonial territories in Africa. Tshekedi and Seretse Khama were two strong personalities who took a lead in the process of administrative and political centralisation. This proves the third hypothesis made above.

The growth of nationalism outside the Protectorate was also an important factor in promoting administrative and legislative centralisation. Beyond the borders of the Protectorate, the growth of the nationalist movement was accompanied by the establishment of territorial legislative assemblies in most African countries such as Ghana, Kenya, Uganda and Nyasaland. The advocacy of nation-building as part of the nationalist movement in Africa in general also had a demonstration effect on Bechuanaland elites, encouraging them to request the same for themselves. Since Bechuanaland became independent much later than most African countries, the recent trends were clearly visible to its elites. Those involved in the process, imbued with a unitarist culture and a sense of the course of events in other parts of Africa, were led to advocate a centralised unitary form for the Bechuanaland Protectorate and later for Botswana. This proves the fourth hypothesis made.

5.10 SOURCES CONSULTED

Abbreviations:

AAC. African Advisory Council

C.;Cd.;Cmd.;Cmnd. Command Papers of the British Government.

EAC. European Advisory Council

IFSY. *International Financial Statistics Yearbook*

JAC. Joint Advisory Council.

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Interviews were conducted with the following:

Prof A. Low - Clare Hall, Cambridge.

Dr P. Mawhood - Dept of Politics, University of Exeter.

Prof L. Ngcongco - University of Botswana.

Prof L.A. Picard - Graduate School of Public and International Affairs, University of Pittsburg.

Prof T. Saunders - Vista University.

Prof T. Tlou - Principal of the University of Botswana.

Dr T. Tsie - Department of Political and Administrative Studies, University of Botswana.

Chapter 6

ZIMBABWE (RHODESIA)

6.1 INTRODUCTION

Zimbabwe became an independent Republic on 18 April 1980 and adopted a highly centralised unitary constitutional form.

Two categories of criteria have been utilised for identifying a centralised unitary state in this thesis. As far as the political-legal criteria are concerned, Zimbabwe's 1980 constitution does not provide for 'subsidiary sovereign bodies' and is therefore unitary in terms of this criterion.

In terms of the fiscal criteria for identifying a centralised unitary state: in the 1981 calendar year, the central government was responsible for 71,9 percent of recurrent expenditure, and local government, the balance of 28,1 percent. In 1981, central government expenditure as a percentage of Gross Domestic Product (GDP) amounted to about 40 percent, indicating a substantial role for the government in the economy (Report of the Commission of Inquiry, 1986). Therefore in terms of both political-legal and fiscal criteria, Zimbabwe became a centralised unitary state at the time of independence.

6.2 NOMENCLATURE

Since the commencement of formal rule by the British South Africa Company (referred to as the 'Company' below) in 1889, the country has variously been referred to as, 'Southern Rhodesia', 'Rhodesia', 'Zimbabwe-Rhodesia', and 'Zimbabwe'. For the purposes of this thesis, the country will be referred to

by the official name which applied during the particular period under discussion: during the period 1964-1979, it will be referred to as 'Rhodesia'; and during the period 1979-1980, as 'Zimbabwe-Rhodesia'.

Throughout Rhodesian history the concepts, 'amalgamation', 'union', 'federation', 'dominion status' and 'self-government' have been used by the political elite to articulate their wishes for a strong central authority, either accruing from internal aggregations of power within the geographic boundaries of Southern Rhodesia, or through the membership of a larger political system including neighbouring territories. Seldom has the precise constitutional meaning of any of these concepts been spelled out.

For the purposes of this study, 'amalgamation' and 'union' are taken to refer to the establishment of a centralised unitary state. 'Federation', 'dominion status' and 'self-government' are sometimes seen as interim stages before another constitutional stage is reached, more particularly that of the establishment of a unitary state. For example, the achievement of self-government or dominion status was seen by Southern Rhodesian elites as a necessary development before amalgamation could be achieved, whereas others saw the Central African Federation (CAF), established in 1953, as a preliminary stage to the establishment of a Central African unitary state.

6.3. SCOPE, SOURCES, CIRCUMSTANTIAL FACTORS, AND HYPOTHESES

6.3.1 Scope

This chapter covers the period 1889 to 1980. It is hypothesised, as mentioned below, that the foundations for the centralised unitary constitution of

Zimbabwe were laid during the early period in the country's history, a period which left its mark on the later constitutions drafted for the country. Only the more significant constitutional debates and changes as embodied in new constitutional documents will be analysed here. These include the British South Africa Company Charter of 1889, the Supplemental Charter of 1898, the 1923 Constitution for Southern Rhodesia, the Rhodesia and Nyasaland Federation Constitution, 1953, the Rhodesia Constitution of 1970 and the Constitution of Zimbabwe, 1980.

6.3.2 Sources

A number of sources, both written and oral, are referred to in this chapter. They include historical texts and official documents like British Government Command Papers, Legislative Council and Legislative Assembly Debates, official communications and personal interviews. Information used originates generally from important political elites involved in the political processes in Rhodesia, and it is assumed that they represent, in varying degrees, general public opinion at the time.

6.3.3 Circumstantial factors

The many circumstantial factors which contribute towards the adoption of different constitutional forms in different circumstances have been mentioned in earlier chapters. It is often impossible to isolate specific factors impacting upon the adoption of constitutional forms because many of these are not explained or documented and, in fact, several may act in unison on the constitution-drafting process. They are often implicit in the views, actions and interests of individuals and political movements involved in this process.

Furthermore, different factors come into play at different times.

An important consideration, in the case of Rhodesia, was what S.A. de Smith (1964:78), refers to as the 'climate of opinion' in which the older dominion constitutions were drafted. Many of these, such as the 1923 Constitution of Southern Rhodesia (though Rhodesia was never a dominion) were reconstructed Westminster unitary models. Very little debate was engaged in concerning the nature of these constitutions. In the case of Rhodesia, perhaps more debate than normal took place, because of the existence of a minority white power elite in that country up until independence. One of the tasks of this chapter will be to establish what the 'climate of opinion' was at the time of the drafting of the various Rhodesian constitutions, and to what degree 'reconstructed Westminster unitary models' were simply adopted in Rhodesia.

Another task will be to identify both the general arguments and the more specific ones which came into play at different times in Rhodesia's constitutional evolution, in framing and sustaining a centralised unitary constitution during the successive regime changes, up until the time of independence in April 1980.

The general factors contributing towards the adoption and maintenance of a centralised unitary form of government in Rhodesia/Zimbabwe are as follows:

- the nature of British colonisation policy and historical precedents;
- black/white political interests, and socio-economic and cultural factors, such as a unitarist political culture, present in Rhodesia up until independence in 1980;

- attempts at various times in Rhodesia's history to bring about a closer legal relationship between Rhodesia and its neighbouring territories either under confederal, unitary or federal constitutional forms and the realisation of these attempts;
- the imposition of sanctions against the territory and the desire by white Rhodesians to retain their privileged political and economic positions in the face of demands of black nationalist groupings;
- the military conflict preceding the Lancaster House Conference on Rhodesia in 1979, which led to independence in 1980.

6.3.4 Hypotheses

The following three hypotheses are made:

1. That the nature of the early colonisation process and conquest, and the violent responses by the indigenous African population between 1893 to 1897, consolidated white power and contributed towards a unitarist political culture within the white community. Further, the mould was cast in Rhodesia for the centralised unitary system of government adopted at the time of independence, by events leading up to responsible government in 1923. This centralised form of government was reinforced over the years by a number of internal and external factors, which eventually resulted in Zimbabwe again adopting a centralised unitary constitution at independence in 1980;

2. That Rhodesia's uncertain political relationship with its neighbours has strengthened centralisation or centripetal forces within the country. At various stages the country's white rulers have contemplated and entered into closer constitutional and administrative relationships with neighbouring territories, either as a constituent element of a unitary state, or of a semi-independent confederal or federal state. A closer relationship with a neighbouring territory may imply the creation of a new superior central authority and a diminution of the powers of an existing authority, by ceding powers to that new authority. An existing authority is at the same time unlikely to cede powers to a lower authority further weakening itself and diminishing its prestige;

3. That the political nature and complexion of Rhodesian society, and in particular white society, had a major impact on the nature of the constitutions adopted over the years up until independence. White interests always dominated the constitution-making process and consequently the constitutions produced over the decades mirrored these political realities.

6.4 THEORETICAL SCHEME

This chapter will follow Etzioni's four stage conceptual scheme as modified in chapter 3 above.

- i) *The pre-centralised stage* (1889-1898) corresponds with the imposition of Company rule, leading up to and including the

adoption of the Supplemental Charter of 1898.

- ii) *The centralisation stage (1899-1923)* corresponds with the period beginning in 1899, leading up to the adoption of the 1923 Constitution.
- iii) *The take-off stage (1924-1978)* corresponds with the period 1924-1978, the consolidation of white control and the adoption of successive centralised unitary constitutions.
- iv) *The termination stage (1979-1980)* corresponds with the negotiating process and the period 1979-1980, and the adoption of a centralised unitary constitution for an independent Zimbabwe.

6.5 SOUTHERN RHODESIA 1889-1898 - *THE PRE-CENTRALISED STAGE*

6.5.1 Historical and cultural factors

In the 1860s, discoveries of gold in Mashonaland (Southern Rhodesia) attracted the attention of Mr Cecil John Rhodes, a leading mining entrepreneur resident in Kimberley in the Cape Colony. In a letter dated 5 December 1888, the British High Commissioner at Cape Town reported to the British Colonial Secretary that the rush of concession hunters to Matabeleland (Southern Rhodesia) had produced a condition of affairs dangerous to the peace of the country (Franck 1960:11). In order to address these concerns, the British South Africa Company of Rhodes, petitioned the British government and was awarded a Royal Charter initially for twenty-five years, together with quasi-

sovereign powers to administer the territory. In terms of the Southern Rhodesia Order-in-Council of 29 October 1889, which granted the Charter to the Company, it was authorised and empowered, subject to the approval of the Secretary of State to acquire, 'powers necessary for the purposes of government and the preservation of public order in or for protection of territories, lands, or property ... '(C.8773 para.3).

The powers of the Company were, however, restricted in so far as diverse existing and new concessions and agreements were concerned. Agreements which had already been made with certain chiefs and tribes inhabiting the region had to be honoured. Any new agreements or alterations to existing concessions and agreements had also to be approved by the Secretary of State (C.8773 para.2, 3, and 4).

In terms of paragraph 10 of the Charter, the Company was given wide powers to

preserve peace and order in such ways and manners (sic) as it shall consider necessary, and may with that object make ordinances (to be approved by our Secretary of State) and may establish and maintain a police force (C.8773).

This provision, in fact, gave the Company wide powers to subdue the 'native' rebellions which occurred between 1893 and 1897. Thus the Company enjoyed restricted authority over the indigenous population, but extensive authority to govern and administer the territory in all other respects. The only formal concession made to decentralisation was the capacity given to members of the Company to constitute and regulate Committees or Local Boards of Management (C.8773:25:x). Company rule began with a small centralised administration

concerned mainly with white affairs.

As more white settlers drifted into Mashonaland, the territory occupied by Chief Lobengula in the 1890s, the potential for conflict between these two groups grew. A series of brutal conflicts took place, beginning in 1893 and ending in 1896, between the white authorities and Chief Lobengula's Matabele military men. These encounters were initiated by the appropriation of Lobengula's cattle by the Company, the slaughtering of cattle owing to a rinderpest outbreak, and enforced labour practices. By September 1897, the Matabele had been disarmed by the Company, and had ceased to be a factor of military importance (Gann 1965:133). It is estimated that nearly ten percent of the white population, that is 400 individuals, and 8 000 of the African population, became casualties of this conflict. Nevertheless, European self-confidence remained unbroken, and none doubted that colonisation must continue (Gann 1965:140).

What is important about these conflicts is the impact that they had on the white psyche and on the future form of government in the country. There are a number of pointers in the literature referred to below, as to how and why, in the wake of these conflicts, the future form of government evolved as it did.

6.5.2 The administration of the territory

In November 1897, Lord Alfred Milner, High Commissioner in South Africa, visited Rhodesia. He described the Rhodesia of the time as 'in a pretty handsome mess administratively' (Headlam 1931:131). However, at this time a new concern over the treatment of Africans began to develop as a result of the

brutalities suffered during the conflicts, not only amongst the leadership hierarchy in the Company, but also in Britain itself (Ranger 1967:322). The self-confidence, which had carried whites through before 1896, particularly with regard to their methods of African administration, evaporated when a new fear of further uprisings developed. A new realisation dawned that, in future planning, the attitude of the Africans would have to be taken into account (Ranger 1967:328).

The effects of the earlier uprisings, according to Ranger, were not simple nor did they all point in the same direction. In many ways they strengthened the African position in Southern Rhodesia, while at the same time strengthening the position of the white settlers (1967:328). One of the effects of the uprisings was the acceleration of white settler advances and a growing bitterness against the Company's failure to protect the settler community from further attacks. According to Ranger, the settlers who had lost property in the uprisings were determined to 'extract payment in constitutional terms' (1967:331).

In November 1896, the *Rhodesia Herald* commented as follows:

It is a deplorable fact that the white inhabitants of the country who have shed their blood and risked their lives in fighting the battles of the Chartered Company ... are placed politically speaking on a level with the blood-thirsty Matabele and the cowardly, treacherous Mashona, their deadly enemies. We have hitherto had no voice in the affairs of the country and we venture to state that the interests of the Company have suffered severely as a consequence ... (Ranger 1967:331).

Commenting further on this period, Ranger says that racial prejudice and discrimination were more deeply seated in Southern Rhodesia in the early years of its existence than in the older colonies of South Africa. He attributes this fact to the experience of the rebellions and the folk memory of these events which every Rhodesian inherited (Ranger 1967:343).

Rogers and Frantz, in a comprehensive study of the attitudes and behaviour of the white population published in 1962, have the following to say:

European immigrants into Southern Rhodesia established their dominance over the indigenous population through a superior technology, military conquest, and more comprehensive means for regulating political relations. Many had come from a society characterized by a rather rigid system of social classes, in which an Englishman traditionally knew to whom and on what occasions to show deference. The African societies have their own systems for showing respect and politeness to individuals of superior status. The cultural backgrounds of the Africans and Europeans combined to support the new system in which dominant or superior status was assumed by Europeans ... (Rogers and Frantz 1962:208-209).

The above perception, I submit, filtered through to successive constitutional revisions up to and including the 1979 internal settlement constitution for Zimbabwe-Rhodesia.

In response to settler discontent at the end of the nineteenth century, Rhodes promised a semi-elective system of government preparatory to final formal

self-government (Ranger 1967:332). This form of government was proposed because it was believed by the Company that, in the circumstances, it was the smallest price it could pay to satisfy the settlers and that it offered to the British public the appearance of having introduced significant reform (Ranger 1967:335).

To give content to the above-mentioned promise by Rhodes, a further Southern Rhodesia Order-in-Council, dated 20 October 1898, was published, which elaborated on the 1889 Charter, providing in the main for a Legislative Council consisting of the Administrator, the Resident Commissioner and nine other members, five of whom were to be appointed by the Company with the approval of the Secretary of State, and four to be elected (Southern Rhodesia Order-in-Council, 20th October, 1898). Elected members to the legislature would have no say in the Executive branch of government. It also provided for a system of 'Native Administration', an 'Electoral System', and a 'Supplemental Charter'.

This Order-in-Council was a more extensive document than the previous Order-in-Council of 1889, and in particular outlined the future administration of the African population or what was referred to as 'Native Administration'. Provision was made for the appointment of a Secretary for Native Affairs and Native Commissioners amongst others. The duties of these and all other officers were described in the Order. The powers of the Company over 'Native Administration' were restricted and in terms of, for example, section (80) of the Order, it was laid down that:

No conditions, disabilities, or restrictions shall, without the previous consent of the Secretary of State, be imposed upon

natives by Ordinance which do not equally apply to persons of European descent, save in respect of the supply of arms, ammunition, and liquor (C.8773:14).

The above, referred to as the 'reserved clauses', were incorporated in the 1923 Constitution.

The latter provision, according to Rogers and Frantz, was to minimise civil disturbances and irresponsible behaviour against the Europeans, the government and fellow Africans (1962:245). The Order-in-Council of 1898 also placed a statutory obligation on the Company to provide sufficient land for African occupation (C.8773:section 81).

Ranger comments that,

from 1898 onwards Southern Rhodesia moved steadily towards settler supremacy; in 1903 they achieved parity in representation in the Legislative Council; in 1908 they attained a majority there; even at this early date no one questioned that Company rule would be followed by settler rule. The mixture of Company and settler power, was the form that white supremacy took in Rhodesia after 1898 (1967:336).

The Order-in-Council of 1898, (C.8773) also provided for a complicated set of voter qualifications, including amongst others, citizenship, occupation, ownership, earnings and literacy qualifications. In terms of these qualifications, few Africans or Indians were likely to qualify for the vote

and, in fact, by 1922 never more than 1,5 percent of the electorate was made up from this group.

From the year 1898 onwards, the form of government in Southern Rhodesia may be described as a dualistic or parallel administration, in that separate legislative, executive and administrative structures were created for the white and African population groups with overlapping control at the centre. Ultimate control was exercised by an internal hierarchy of white officials responsible to the High Commissioner and Secretary of State.

In terms of this Order, the Imperial Government took over military and police control by placing it in the hands of the High Commissioner for South Africa. A Resident Commissioner for Southern Rhodesia, who was subordinate to the High Commissioner for South Africa was appointed and became an *ex-officio* member of the Executive Council and the newly created Legislative Council. The High Commissioner had to sanction all administrative appointments and approve all local ordinances before these could be submitted to the Secretary of State. He had also to approve all military operations.

6.5.3 African administration

The Administration in the territory sought to preserve much of the traditional political structure of the African communities, but the 'Native Commissioners' replaced the chiefs and headmen as the principal holders of power. African administration in Southern Rhodesia was thus more 'direct', unlike in other parts of British colonial Africa at the time (Hailey 1979: 341). The Colony, according to Gann, drew heavily on the experience of 'direct rule' as applied in the Natal Colony (Gann 1965:148). A 'Native Department' dealt with African

affairs by means of its own hierarchy of European officials, headed by the Administrator of Southern Rhodesia. At the base of the administrative pyramid stood the native chiefs who had only limited legal powers. Chief Lobengula's monarchy had been destroyed during the earlier conflicts and there were no 'native states', such as that of the Barotse north of the Zambezi (Gann 1965:148).

As regards the philosophy behind the establishment of a separate 'Native Affairs Department', Palley (1966) refers to Sir Alfred Milner, High Commissioner for South Africa from 1897 to 1905, and his approach to the issue. Milner was an important actor in the framing of the 1898 Charter, and felt at the time that of all the administrative questions affecting Rhodesia, the most difficult, as well as the one with the most potential for conflict between local opinion, whether under the autocratic government of the Company or a representative system, and the views of the Imperial Government was the 'native' question (Palley 1966:141).

Palley contends that Milner viewed the successful administration of the 'natives', even in the best of circumstances, as being dependent upon 'men' rather than regulations, but where administration was still in an embryonic stage, as it then was in Rhodesia, the character of the administrators was of yet greater importance. In a country so extensive, with districts remote and inaccessible, it was necessary to put large powers into the hands of the local officials responsible for the government of the natives. Milner believed that, the only form of government which the natives understood was personal government. 'They are accustomed to look to a chief' (Palley 1966:141). Through Milner's influence and beliefs, the administration of the African population was 'direct' and the colonial authorities could exercise close

control over this population group through their own appointees. Since the administration was still in an embryonic stage of development, these appointees had a degree of latitude to determine 'native administration' policy for themselves.

The pattern for the future administration of the African population group was also set by the early practice of the Company, and its need to prevent further rebellions and maintain law and order (Rogers and Frantz 1962:246). As far as the attitude of the white settler population towards the African group in the early days of settlement was concerned, Mutambirwa says, because of their small numbers, the whites were united in their attitudes and behaviour towards the Africans. Their sense of insecurity, together with the fear of being swamped by the Africans, led the Europeans to develop and maintain policies intended to keep them at a distance educationally, socially, economically and politically. To give up or share privileges with the Africans it was thought would be detrimental to the interests of the white race (Mutambirwa 1974:14).

In summary then, the general approach to the administration of the Colony was that of central administrative dominance and control by the white population with parallel administrations for the white and African population groups. Varying degrees of autonomy were given to officials presiding over the white and African administrations, but ultimate control was exercised by a white centralised administration. In general, according to Gann, in the earliest pioneering days, 'the administrative machine was small, highly personal in character, unspecialised and mostly amateur' (Gann 1965:145).

6.6 THE EVOLUTION OF RESPONSIBLE GOVERNMENT 1899-1923 - *THE CENTRALISATION STAGE*

6.6.1 Internal administration and the climate of opinion

In the years following the Supplemental Charter of 1898 there was a gradual shift of legislative power away from the company and into the hands of the European population (Franck 1960:14). However, throughout the period of Company rule, Southern Rhodesia continued in law to be administered as a 'place outside Her Majesty's dominions', that is, as a private estate. There was much dissatisfaction with this status on the part of the local European population, commencing in the early part of the century. In 1914, after the expiration of the original Charter grant, when a supplementary Charter was issued extending the company tenure for a further ten years, the Legislative Council was authorised, when it so wished, to petition the Crown for the termination of Charter rule and for the establishment of a 'self-governing' colony (Franck 1960:15).

One of the purposes of the introduction of legislative changes beginning in 1894 was, according to Palley, to lay the foundations for future self-government to enable Southern Rhodesia to ultimately enter a South African federation. On this assumption it was decided that Southern Rhodesia should, in her legislative and administrative policies, follow the general pattern set by the South African colonies (Palley 1966:132).

Archibald Colquhoun, the first Administrator of Mashonaland, writing in 1906, comments on the form of government in existence at the time:

The legislative body, with its imitation debates, cumbersome and costly machinery, is an anomaly. The civil service of Rhodesia is extraordinarily expensive considering the functions it exercises, and even at this early stage of affairs it possesses a comparatively large and steadily increasing pension-list. Like everything else it was hastily organised on a model too elaborate for the needs of the country, with a resulting multiplicity of officers and abundance of red tape. The fact that all real initiative rests with the Board in London, and that all questions of any importance, especially those connected with expenditure, must be referred to them, renders this method of government peculiarly pointless (Colquhoun 1906:304).

During the early years of the century, the settler community learned to organise itself into a cohesive political unit, and their voice was heard not only within the country, but in Whitehall as well (Mutambirwa 1974:67). The white settler community, moreover, faced little political opposition after the defeat of the 'native' rebellions in the 1890s. The African population lacked articulate leaders to present a united political viewpoint and the old traditional leadership was unable to stem the tide of European expansion (Mutambirwa 1974:73-74).

The main object then of whites and Company rule, in the first decade of the twentieth century, was to produce partially Westernised Africans who would not challenge European supremacy (Mutambirwa 1974:84). This relationship was articulated by several individuals prominent in white politics at the time.

For example, in 1907, Mr H.T. Logden, Member of the Legislative Council,

proposed, in a motion placed before that Council, that the Company be relieved of its administrative responsibilities, which should be placed in the hands of a government adequately representative of the people (Legco Debates, 1907:21). He believed that this sentiment accurately expressed the settled opinion of the great bulk of the population of Rhodesia (Legco Debates, 1907:21). Logden was referring, in fact, to the small white population of Southern Rhodesia.

The relationship between the European settlers and the African population was further articulated in 1909 by Mr Charles Coghlan, a later leader of the Responsible Government Movement (RGM), participant in the framing of the 1923 Constitution and first Premier of the Colony. Addressing a rally in March 1909, he said,

'they [the Europeans] did not want Rhodesia turned into a black-man's country. They wanted it to be a whiteman's country'. White supremacy was the goal and to maintain it and all the benefits it brought to the settler, political power should for all time be in the hands of Europeans (Mutambirwa 1974:198).

Gray, writing in more general terms on the relationships between the white and black populations between 1918-1939 and the rival policies of segregation and trusteeship, maintained that

the principal object of policy was to protect and develop a white man's country; the Government was seen as the guardian or trustee of European civilization, and European settlers and capital

provided the 'steel framework' of the superstructure (1960:31-32).

At this time of responsible government in 1923, Gray describes the colony as having evolved a way of life which he terms 'intolerably Rhodesian'. The white residents were proudly conscious of Rhodesia's new independent existence, of its peculiar experiences, and of its affection for British middle-class values (1960:12).

In summary, the administrative structures were primitive, centralised and not particularly efficient. The Company dominated the administration in the first two decades of the century, and focused more particularly on 'balancing the books', rather than the general development of the territory. This latter approach gave rise to the Responsible Government Movement. The white population were generally insecure, fearful of African domination, and believed in the political supremacy of their population group. This formed the 'climate of opinion' which influenced the constitution-drafting process beginning in the third decade of the century.

6.6.2 Southern Rhodesia and its neighbours

One of the earliest public discussions about Southern Rhodesia's relationship with its neighbours took place in March 1903. At the invitation of the High Commissioner for South Africa, Lord Selborne, representatives of the four South African colonies and Southern Rhodesia attended a convention in Bloemfontein, during which it was decided to admit the territories into a Customs Union (Legco Debates, 1903:149).

The Treasurer in the Legislative Council in Southern Rhodesia, Mr F.J. Newton, stated at the time:

The Customs Union secured uniformity of tariff, which was one of the essential preliminaries to the federation of the South African state Adherence of Southern Rhodesia to the Customs Union would distinctly define and establish her position in South Africa ... as one of the states of the South African body politic (Legco Debates, 1903:154).

Mr W.H. Haddon, speaking on behalf of the elected members of the Legislative Council in the same debate in 1903, said that if the 'Customs Convention was to be the be all and end all of the matter ...', the elected members would not be in favour of it: he felt that the customs union was 'the first stepping stone towards the federation of South Africa' (Legco Debates, 1903:154).

In 1907 Lord Selborne suggested that the Europeans of Southern Africa should 'federate' to develop the area as far as Lake Tanganyika in a development comparable to that of the United States of America (Palley 1966:325). In response to a memorandum sent in this connection to the Secretary of State for the Colonies by Lord Selborne, dated 26 July 1907, Mr W.H. Milton, the Administrator in Southern Rhodesia, advocated 'the review of the situation generally' (Cd.3564:100). Milton was referring to Southern Rhodesia's relationship with the South African colonies. Following this, a Southern Rhodesia delegation participated in the South African Convention of 1908-1909. Mr Charles Coghlan, whose contribution is discussed below, was one of the Southern Rhodesia delegates to the Convention.

From about 1909, suggestions were being made that Southern and Northern Rhodesia should amalgamate to form a 'great British community in the heart of Africa under its own government' (Palley 1966:325), as distinct from a federal union with South Africa. After the formation of the Union of South Africa, without the membership of Southern Rhodesia, the colony began to look at a possible relationship with territories to the north of it. In 1913 the Company put forward a scheme to amalgamate with Northern Rhodesia so as to economise on administrative expenses (Palley 1966:325). A similar amalgamation scheme was put to the Southern Rhodesia Legislative Council in 1917, in the form of a motion proposing that the Territories of Northern and Southern Rhodesia henceforth be administered as one Territory (Legco Debates, 1917:Col.309).

Although the motion was carried overall, it was rejected by the elected members (who were in a minority), since it was felt that Southern Rhodesia would not gain responsible government if the 'Black North' was added to it (Palley 1966:325).

6.6.3 Local perspectives on the role of government

During the course of the debates concerning the forging of closer relationships between Southern Rhodesia and its neighbours, some insights were revealed as to the preferred form of government for the territory; the role that it should play; the rationale behind this choice; and the existence of a unitarist sentiment. For instance, Mr F.J. Newton, Treasurer in the Southern Rhodesia Legislative Council, who in 1923 became a Rhodesian delegate to London to negotiate a responsible government constitution for the territory, expressed an opinion on the role of government. His views, typical of white Rhodesian perspectives, eventually filtered through into the constitution-

making process. In April 1917, during a debate on the desirability of administering the territories of Northern and Southern Rhodesia as one, Newton said that it seemed to him to be a fatuous idea to allow two countries to be separated by the one important river, namely the Zambezi. He said that they should think of the Zambezi as a great commercial asset to both territories (Legco Debates, 1917:Col.312).

Newton listed several other functional areas in which amalgamation would be beneficial to both countries. The idea of having two separate Customs Departments

to collect on the same tariff from two separate and parallel States seems to me to be verging on the absurd. As regards the police, the two forces are already worked under the Commandant General and the same staff a group of departments in which I think we should really obtain the greatest advantage by amalgamation [are] the Department of Agriculture (and Veterinary) and the Medical Department. We should have these departments under one control We should be able to deal comprehensively with all questions of disease Then consider the Native Department. We should have everything under one control ... the Native Department is our 'strong suit' ... there has not been the slightest trouble within our borders Then there is the question about the Judges ... Northern Rhodesia, one judge - bad. Southern Rhodesia, two judges - bad. United Rhodesia, three judges - good (Legco Debates, 1917:Cols.314-315).

Newton concluded his address by saying: 'We are all concerned to get the best

form of government compatible with efficiency. What is good for one of us is good for all of us' (Legco Debates, 1917:Cols.315-316). Newton's belief therefore was in strengthening the Southern Rhodesia government under which the country was governed at the time, thereby acknowledging the existence of a unitarist sentiment.

The other issue debated in the Legislative Council was that of responsible or self-government for Southern Rhodesia. Newton outlined what he saw as a desirable form of government for Southern Rhodesia:

'Responsible or self-government, as it is understood in the British Empire, involves a representative assembly, and an administration responsible to, and dependent for its existence on the support of that assembly. Throughout the Empire this representative assembly is also the legislative assembly and the responsible ministers are members of that assembly as a necessary preliminary to self-government you must have a representative legislative assembly containing a number of gentlemen able to form and carry on the administration, and in addition you must have another set of gentlemen able to criticise the government and to undertake the administration when the first set cease to possess the confidence of the assembly Such an assembly cannot be made in a day, but it is to a gradual enlarging and strengthening of the legislative assembly that the Board looks as the necessary means of preparation for self-government. In fact a representative assembly of a certain size and capacity is an indispensable preliminary to self-government,

and that we propose to build up' (Legco Debates, 1917:Cols.316-317).

In a further defence of this motion, Newton argued in favour of amalgamation by saying that,

whatever helps to make us bigger and stronger; whatever adds to our importance or our capacity; whatever increases our interests, or whatever widens our outlook, or whatever reinforces us in that element we admittedly lack - the element of numbers; whatever does these things must help us on our path towards our much-wished-for goal (Legco Debates, 1917:Col.321).

For effective government, the need was for a legislative assembly of a minimum size and capacity. The development of the centre was important in this view. Amalgamation of Northern and Southern Rhodesia would contribute towards this goal of a strong central government and the achievement of responsible government.

6.6.4 Responsible government

As the early years of the century advanced, Company rule came under increasing criticism for its reputed record in Rhodesia, particularly with regard to its lack of development of the territory. In the period under discussion a number of important influences and events contributed towards the adoption of the 1923 centralised unitary constitution.

From about 1914, when the first twenty-five year Charter was about to expire,

local white Rhodesians began to think in terms of responsible government for the territory. In terms of British colonial policy, responsible government was understood to mean the following: the acceptance by the Governor of the advice of his responsible Ministers; the presence of those Ministers in one or other house of the legislature; their dependence upon a parliamentary majority for their continuance in office; and the solidarity of the Cabinet under the Prime Minister (Roberts-Wray 1966:66).

Besides amalgamation with Northern Rhodesia and responsible government, there was a further constitutional option for Southern Rhodesia - union with South Africa - an idea entertained in the first decade of the century. Two movements were formed to further the ideas of responsible government or union with South Africa. The Responsible Government Movement was formed in July 1917 and a Rhodesia Union Association was formed at the beginning of 1919, which supported union with South Africa. There was no African participation in either of these groups (Lee 1974:9).

In June of 1919, Sir Charles Coghlan was elected President of the Responsible Government Association and, in the following year, candidates supporting the RGA won twelve out of the thirteen elected seats in the Legislative Council. The thirteenth seat was won by Mr R.A. Fletcher who favoured a scheme of Representative Government. Some 4663 votes, out of a total of 6765 cast, favoured responsible government.

In May 1920, the newly elected Legislative Council passed a resolution requesting that

the King's Most Excellent Majesty in Council establish forthwith

in Southern Rhodesia the form of Government known as Responsible Government which this territory urgently requires for the proper development of its resources and the freedom and prosperity of its people (Legco Debates, 1920:Col.48).

To the communication of the content of this Resolution, Lord Milner, who was now Colonial Secretary, replied by saying that he was well disposed to giving effect to that desire; and that the details of the new constitution would be a matter which would require very careful consideration, and probably discussion with the elected members of the Legislative Assembly (Cmd.1273:16). Elected members responded by saying that there should be no reason why that consideration should not begin at once, and why the constitution should not be framed and submitted to them within the next few months (Cmd.1273:17).

In 1921, Mr Winston S. Churchill assumed the office of Secretary of State for the Colonies and in response to this motion appointed a committee on 7 March 1921, consisting of Lord Buxton, former High Commissioner in South Africa, as Chairman, and four other members to investigate the matter of responsible government.

Two of the three terms of reference of the Committee were to determine when and with what limitations (if any) responsible government should be granted to Southern Rhodesia, and what procedure should be adopted with a view to working out the future constitution for the Colony (Cmd.1273:1). The Committee reported on 12 April 1921, the report becoming known as the 'Buxton Report'. Two reports were published, the first concerning Southern Rhodesia and the second containing questions affecting Northern Rhodesia. On the first page of the First Report it was stated that no advantage was to be gained by asking

for oral evidence. The Report said that documents placed before it by the Colonial Office, the Memoranda of the British South Africa Company, and the Resolutions of the Elected Members (to the Legislative Council) appeared to be sufficient to enable it to consider and to arrive at a decision on the various questions referred to it (Cmd.1273:1).

The First Report urged that the Report of the Committee should be published, and sent to the Elected Members for their consideration and that of the Southern Rhodesian public. If there appeared to be general agreement with the Report of the Committee in Southern Rhodesia, the Colonial Office would draft a Constitution on the lines of the Report (Cmd.1273:5-6). The Report made two suggestions: that the draft be sent out to Rhodesia for full criticism locally by the elected Members and the public or, before being sent, be considered in conference with the Colonial Office and a deputation of elected members. The Report continued that, in drafting a constitution suitable for Southern Rhodesia, a number of questions would necessarily arise, in which local knowledge would be of great importance. The Committee felt that in drafting a final constitution for the Colony, a conference with the Colonial Office and a deputation of elected members would have considerable advantage, both in saving time and the avoidance of misunderstanding (Cmd.1273:6).

The Report held further that if there appeared to be general agreement in Southern Rhodesia with the Report of the Committee,

the Colonial Office would draft a Constitution on the lines of the Report It appears to us that, whatever may be the procedure, it would be better that, in the first instance, the constitution should be drafted by the Colonial Office rather than

in Rhodesia. The Colonial Office possess facilities and opportunities for drafting which are not available in Rhodesia. It should be made clear that the draft constitution was only a draft, and was open to the freest criticism (Cmd.1273:6).

The First Buxton Report gives few clues as to why a centralised unitary constitution was eventually adopted in 1923. Because of the smallness of the white population, it was suggested, Southern Rhodesia could only sustain a unicameral parliament comprising a Legislative Assembly of twenty-six to thirty members (Cmd.1273:8). The Legislative Assembly, as proposed in the Buxton Report, would have supreme legislative power in so far as the white population, estimated at 33 000, was concerned, but limitations or reservations were placed on its power with regard to the 'native' (African) population which numbered 770 000 (Cmd.1273:7).

The First Buxton Report suggested that two limitations or reservations should be made when responsible government was granted to Southern Rhodesia; these being that:

The natives are entitled to be secured in their existing position, and to be ensured against discriminating disability or restrictions ... [and] provision must be made for dealing with the disposal of the unalienated Land in Southern Rhodesia (Cmd.1273:8).

The Southern Rhodesia Order-in-Council of 1898 gave the High Commissioner and Secretary of State considerable powers of control over 'Native' administration as mentioned above. The Report suggested that this position be maintained and

advocated the eventual creation of Native Councils in the Native areas (Cmd.1273:9). This was the only mention of decentralisation of power in the First Report.

6.6.5 The Legislative Council debate on the First Report

In a motion placed before the Legislative Council in 1921, the elected members unanimously approved the recommendations of the First Buxton Report. In a Memorandum compiled by the elected members of the Legislative Council in response to the First Report, they indicated a desire to send a deputation, without waiting for the constitution to be actually drafted, to the Secretary of State, in response to the suggestion made above in the Report (Legco Debates, 1921:Cols.781-782).

In May 1921, in a debate in the Legislative Council, Sir Charles Coghlan moved the motion in support of the First Buxton Report. With regard to the creation of a Parliament, as referred to in the First Report, Coghlan said:

What we want is a small, inexpensive Parliament, such a Parliament and such a Government, as is consistent with the efficient managing of our own affairs by ourselves (Legco Debates, 1921:Col.790).

With regard to 'native administration', Coghlan referred in the same debate to the need to continue with the administrative structures created by the Company. He felt that no friction had arisen as a result of the differentiation in administration of the 'natives' from the white population. Legislation concerning the 'natives' was (as pointed out above), specially

reserved for the assent of the High Commissioner and His Majesty in Council, after having been passed through the Legislative Council (Legco Debates, 1921: Col.791).

Mrs Ethel Tawse Jollie, Member of the Legislative Council, speaking in the same debate, emphasised the need to remove the uncertainty about the future of Southern Rhodesia by sending a delegation to the Colonial Office at the earliest possible moment so that a constitution might be drafted in the shortest possible time. The Natal Constitution of 1893, in her opinion and in the opinion of the Report, had to be the precedent for granting responsible government to Southern Rhodesia but, as in nearly all African colonies, constitutions in slightly different forms had to be adopted in order to fit with local conditions (Legco Debates, 1921:Col.803). She was, moreover, supportive of a single chamber legislature, 'because of its comparative simplicity and because of the economy which it effected' (Legco Debates, 1921: Col.804).

6.6.6 The delegation to the Colonial Secretary

In accordance with one of the alternatives for drafting a constitution as expressed in the Report, a delegation led by Sir Charles Coghlan, leader of the Responsible Government Association in Southern Rhodesia, departed for London. The delegation included W.M. Leggate, John McCleary and Sir Francis J. Newton, three strong supporters of responsible government, and R.A. Fletcher who supported a further period of representative government followed by responsible government. With the exception of Sir Francis Newton, all the delegates were elected members of the Legislative Council. Before meeting Mr Winston Churchill, the Secretary of State for the Colonies, the delegation met

with General Jan Smuts, the South African Prime Minister, to ascertain the terms for possible entry into the Union of South Africa.

Preceding the meeting with Mr Winston Churchill, Coghlan 'spent a few strenuous days preparing a skeleton of the constitution...' (Wallis 1950:181). Coghlan's perspectives on unitarism and federalism must therefore be analysed in greater depth and in the context of Southern Rhodesia's agitation for responsible government, since he played perhaps the most prominent role in this movement and in the delegation sent to London to negotiate a new Constitution for Southern Rhodesia. Coghlan, according to Hummel, emerged as a politician whose attitudes reflected some of the economic as well as emotional tensions affecting the course of events which lead up to 1923 (1977:60). Under company rule, Coghlan stands out as the politician least committed to any sectional interest.

Coghlan's early constitutional thinking begins to evolve during his membership of the non-voting Rhodesian delegation which attended the South African National Convention of 1908-1909 referred to above. During the Convention, Coghlan became an enthusiastic convert to the idea of Rhodesia's early entry into the Union (Hummel 1977:71). He, however, reluctantly accepted the unitary structure for the proposed South African state and felt that Cape Town as a legislative capital would be 'too removed and in an atmosphere neither genial nor sympathetic' (Hummel 1977:71). Later, during the Convention, Coghlan expressed his preference for a federal rather than a unitary South Africa.

There were a number of factors which later emerged and which drove him to advocate a responsible centralised unitary form of government for Southern Rhodesia. It was believed that South African government leaders had made the

Company an offer, during prior negotiations with the South African Prime Minister, General Jan Smuts, to buy out its Rhodesian assets and to use Rhodesia as a dumping ground for poor whites. Further, it was believed that the Rand Lords and Transvaal Progressives wanted Rhodesia for its black labour and its speculative assets in land and minerals. Chiefly however, they wanted it because it was British and, as such, would serve their own political end of creating an exclusively British party dominating Union politics, which would undermine the high ideal held by General Louis Botha (Smuts' predecessor) of a centrist party that cut across the white language divide (Hummel 1977:71).

The specific terms of admission of Southern Rhodesia into the Union of South Africa were spelled out in a *Government Gazette Extraordinary* dated 31 July 1922. In October of 1922 a referendum was held in Southern Rhodesia on whether to enter the Union or accept responsible government. Some 8775 voters voted for responsible government and 5989 for incorporation into the Union. It is unlikely that any of the specific incorporation terms offered by General Smuts affected the nature of the responsible government constitution, as it had already been negotiated with Churchill. However, Smuts' conditions for incorporation into the Union, together with Coghlan's responses, yield a further insight into the latter's thinking on the constitutional form desired for Southern Rhodesia.

Smuts suggested that the 'natives' (of Southern Rhodesia) should be governed and legislated for by the Governor General in Council, as would be the case with Basutoland and the Bechuanaland Protectorate were the administration of those territories to be taken over by the Union Government ... (National

Archives of Zimbabwe. CO 8/1/1). Coghlan's response to this suggestion was quite clear:

Rhodesia would rank as a black Protectorate and we should have two sets of legislative and administrative institutions concurrently dealing with the affairs of the territory. A more ridiculous and unworkable suggestion I have never heard of (National Archives of Zimbabwe. CO 8/1/1).

In Smuts' final proposals for union he conceded that, 'to prevent undue centralisation the general control of native affairs would be delegated to the administration of Rhodesia' (National Archives of Zimbabwe. CO 8/1/1). What emerges from this is Coghlan's belief in maximum control of Southern Rhodesia by a Southern Rhodesia legislature.

6.6.7 The British government's perspective

Speaking in a British House of Commons debate on the Buxton Report, Sir S. Hoare, a Member of Parliament, gave some insight into the variety of Crown Colony governments, and perhaps the past degree of flexibility on the part of British government in drafting colonial constitutions. He said:

Crown colony government has grown up haphazard [sic]. Some of it is the result of what took place in the 17th and 18th centuries; some of it has grown up more recently, but much of it ... quite by chance, and the result is that even in the same part of the world you have one dependency governed in one way and another dependency in very much the same conditions of life, governed in

a different way (House of Commons Debates, 14 July 1921:Col.1586).

Mr Winston Churchill, Secretary of State for the Colonies, with whom the Southern Rhodesian delegation was to negotiate later in 1921, said in the same debate:

I agree with what has been said as to the extreme importance of not offering to dictate to this Colony (Southern Rhodesia) what course they should adopt, whether it should be in the direction of assuming responsible government, with all its obligations, or on the other hand in the direction of joining the Union Government of South Africa I think that we have acted wisely in proceeding by means of the Buxton Committee We are now in a position, with a free hand, to discuss the whole subject with the accredited representatives of Southern Rhodesia (House of Commons Debates, 14 July 1921:Col.1626).

Much of the discussion with Churchill, in London in September 1921, concerned the outstanding debts owed to the Company and how these would be met by a responsible government. In July 1919 a Special Commission was appointed by the British government, chaired by Lord Cave, with the purpose of reporting on the amount that would have been due to the Company had the administration been terminated on 31 March 1918, at the end of the second extension of the Company Charter. The Cave Commission, as it was known, made a determination which formed the basis of the negotiations between the Southern Rhodesia delegation and Churchill in London. After strong pleas to Churchill, few financial burdens were placed on the new Southern Rhodesian government.

The need for a small efficient government in Southern Rhodesia once again came to the fore during discussions with Churchill who, in a direct response to the request for responsible government, expressed his continuing concern about debts which a new government would inherit from the company:

It is very difficult for the Colonial Office to give a deaf ear to the repeated requests. But I have felt considerable misgivings about your capacity to bear the necessary financial burdens concerned with it. The misgivings have not diminished as time has gone on (National Archives of Zimbabwe. LE 3/1/2).

Sir Charles Coghlan replied by saying:

We are quite able to bear the burden of Responsible Government if we are burdened with nothing more than we ought to carry. Our budgets here balanced for the last fourteen years as compared with the South African Union with its deficit of 600 000 Pounds (National Archives of Zimbabwe. LE 3/1/2).

In a Dispatch to the High Commissioner for South Africa from the Colonial Secretary, Mr Winston S. Churchill, dated 22 December 1921, Draft Letters Patent providing for the constitution of responsible government in the Colony of Southern Rhodesia were included. According to Churchill, 'these drafts are in the form in which I have determined them after hearing the views of the Delegation of Elected members, and of the British South Africa Company' (Cmd.1273, Dispatch to the High Commissioner). Following each of the sixty-four clauses in the draft, reference is made to the origin of the clauses which were sourced from one of the following: the Natal Constitution Act,

1893; the Transvaal Constitution Letters Patent, 1921; the Malta Constitution Letters Patent, 1921; the Southern Rhodesia Order-in-Council, 1898; and the First Report of Lord Buxton's Committee. There were also new inclusions.

The 1923 Constitution, then was an amalgam of several constitutions and provided for a uni-cameral supreme legislature which could become a bi-cameral legislature at a future date. This provision was based upon the Natal and Transvaal Constitutions. The Report of the Durham Commission, as outlined in chapter 4, is likely to have had an influence on the 1923 Constitution.

No provision was made in the Constitution for regional or local government, however, separate provision was made for 'native administration' based upon the Southern Rhodesia Order-in-Council of 1898 (C.8773). The dualistic approach, referred to above in connection with the 1898 Order-in-Council, continued to be pursued.

In so far as 'native administration' was concerned, the new Constitution was designed to preserve the essential features of the existing system which had worked so satisfactorily in the past (Cmd.1273, Dispatch to the High Commissioner). A further provision was made in the Constitution for the possible future establishment of Native Councils in the Reserves along the lines of the Union of South Africa Act 23 of 1920. This was the only concession to a decentralisation of power in the Southern Rhodesia Constitution.

These provisions provided for the creation of a 'Native Department', the permanent head of which was to be appointed by the Governor-in-Council, that is the Governor acting by and with the advice of the Executive Council, and

with the approval of the High Commissioner. Provision was also made for subordinate officers and for the Governor-in-Council,

subject to the approval of the High Commissioner ... to establish by Proclamation in any Native Reserve or Reserves such Council or Councils of indigenous natives representative of the local chiefs and other native residents as may seem to him expedient, for the discussion from time to time of any matters ... of direct interest or concern to the native population generally or to any portion thereof ... (Southern Rhodesia Constitution, Section 47(1)).

The Governor-in-Council was further empowered

to make regulations conferring on any such Council such powers of management in connection with local matters affecting the indigenous natives as can in his opinion be safely and satisfactorily undertaken by them ... (Southern Rhodesia Constitution, Section 47(2)).

It was urged by Churchill in his Dispatch to the High Commissioner for South Africa, dated 22 December 1921, that the people of Southern Rhodesia should also consider entry into the Union of South Africa, once these terms had been ascertained. They should then express their opinion by means of a referendum.

This was followed by moves in 1922 to have Southern Rhodesia incorporated into the Union of South Africa, and by the offer of terms for incorporation from General Smuts. In the referendum held amongst whites in Southern Rhodesia on

27 October 1922, referred to previously, to choose incorporation into the Union of South Africa or responsible government, those in favour of responsible government gained a majority of 2 785 votes (Davies 1965:35). Consequently, Southern Rhodesia attained responsible government under a new constitution, which came into effect on 1 October 1923.

6.6.8 The nature of the 1923 Constitution

In summary then, the 1923 Southern Rhodesia Constitution provided for a highly centralised vertically integrated unitary form of government for the white population, but a dualistic or parallel, partially decentralised form of government for the African population, with joint responsibilities for White and African affairs at the higher administrative levels. The availability of manpower and the costs involved in running a government were important considerations in devising a responsible government constitution, as was British constitutional tradition.

The sequence of events from the commencement of Company rule in 1889 to responsible government in 1923 did not constitute conventional decolonisation exercise, whereby the citizens of a British colony progressed from the gaining of the franchise to self-rule. Significant in this process and quite different were the demands of the white population group themselves, whose dissatisfaction with the existing conditions and the rule of the Company were not simply the outcome of 'British' instincts, but the result of internal conflicts over economic conditions (Hummel, quoting Lee 1977:59).

The 1923 Constitution was, in fact, a compromise dictated by the attitudes of the white political elite, the Company and the British government. It

incorporated many of the traditions and principles that had been established, beginning in 1898 but provided for a small degree of autochthony.

As mentioned above, the European settlers had various economic interests in the territory. They settled originally in the territory in pursuit of these interests. In order to succeed, it was necessary for them to develop extensive political institutions to maintain their dominance, civil order and internal peace. To achieve these objectives, the European immigrants, 'needed a stable, adaptable, efficient, and responsible government' (Rogers and Frantz, 1962:245). They partly achieved this through their centralised unitary form of responsible government established in 1923.

6.7 THE PERIOD 1924-1979 - *THE TAKE-OFF STAGE*

During the period 1924-1979, there were three main factors which influenced the continued existence and consolidation of the centralised unitary state in Southern Rhodesia, which was based upon the principles of the 1923 Constitution. They were Southern Rhodesia's relations with its neighbours; the increasing scope of government; and the nature of the white political culture.

6.7.1 Rhodesia and its neighbours

From the early settlement of Southern Rhodesia by Europeans until the era of federation (1953-1963), the relationship of the territory with its neighbours had been a recurring topic of debate and dispute. The public justifications for closer relationships with neighbouring territories revolved around both political and economic arguments. Some of the arguments put forward by Rhodesians to justify closer union will be referred to below, to underscore

the existence of a unitarist political culture within that territory, particularly amongst the white population group.

There was also considerable evidence, from motions and statements made by the elite in the Legislative Assembly since the turn of the century, to support the existence of a unitarist political culture in the country. Some of this evidence and the debate it occasioned, come under discussion below.

In 1925, after Southern Rhodesia had attained responsible government, amalgamation with Northern Rhodesia again became an issue. The copper resources of this territory made amalgamation an attractive proposition to Southern Rhodesia. Enquiries were made by the Southern Rhodesia High Commissioner in London, the erstwhile Treasurer under Company rule and delegate to London, Sir Francis J. Newton, about the prospects for amalgamation.

The issue of amalgamation between Northern and Southern Rhodesia was also raised in 1926 and 1927 by Sir Charles Coghlan, then Premier of Southern Rhodesia. These overtures were turned down by the Colonial Office which had plans for a wider East African Federation. Instead a proposal was made by the Colonial Office to carve up Northern Rhodesia and possibly allocate the middle portion to Southern Rhodesia. Nothing came of this proposal. The issue of amalgamation, union and federation again emerged in 1929 in the Legislative Assembly, although there had been continuing contacts and negotiations with the British Government on this issue since the achievement of responsible government in 1923.

Sir Charles Coghlan was succeeded by Mr H.U. Moffat as Premier who served in

this capacity from 1927 to 1933. It was during this time that the Southern Rhodesia Cabinet resolved to propose a conference between representatives of Northern Rhodesia and Southern Rhodesia to discuss amalgamation. The British government refused to permit this conference, pending the visit of the Hilton Young Commission to examine the issue.

In 1929 the Hilton Young Commission rejected any further proposals for additional territory to be added to Southern Rhodesia until it had demonstrated its ability to settle the 'native problem' (Palley 1966:327). This Commission was followed in 1930 by the Passfield Memorandum, which affirmed the United Kingdom's responsibility as trustee for the African people in Northern Rhodesia as elsewhere. Lord Passfield informed the Southern Rhodesian government that amalgamation was out of the question, but felt that 'co-operation between the territories should, however, be increased' (Palley 1966:328).

Speaking in 1929 in the Legislative Assembly, the Premier, Mr H.U. Moffat mentioned several reasons why the territories of Southern and Northern Rhodesia should unite. The principal reason was, according to him,

the absolute similarity of aims and the sentiments of the two countries There are many other reasons; the reason that we adjoin each other over a long border separated only by the Zambezi River The countries are the same in their physical characteristics They produce exactly the same products ... and above all, both countries have the great problem to solve - the native question ... nothing can stop it ... (SRLAD, 10 May 1929:Col.612).

In 1930 a motion was proposed in the Legislative Assembly by Captain H. Bertin, urging the government to take more active steps to achieve the amalgamation of Northern and Southern Rhodesia (SRLAD, 2 April 1930:Col.515). Various speakers in this debate mentioned a number of areas of possible co-operation between the South and the North (Southern and Northern Rhodesia) which would emphasise 'the community of interests that bind us together' (SRLAD, 2 April 1930:Col.517). These areas of co-operation included, amongst others, wireless broadcasting, schooling, transport, and a common legal system. In terms of this school of thought, economic links would be the prelude to political union.

Mr R.D. Gilchrist, speaking to the above motion maintained that:

All of us realise right down from Kenya to Table Bay that the great problem looking ahead of the European of this continent is the native problem, and the need for consolidation of all European interests is obvious and urgent it is necessary to consolidate our European interests and face this great question with a common front (SRLAD, 2 April 1930:Col.530).

With regard to the 'native question', Mr Gilchrist felt that Southern Rhodesia should do all it could to work in unison with the government of Northern Rhodesia (SRLAD, 2 April 1930:Col.534). In the same debate, Mr R.A. Fletcher, advanced a further reason for amalgamation. He said that if the two territories could amalgamate, they would be in an infinitely stronger position as a unit in the sub-continent to carry on negotiations with their neighbours (SRLAD, 2 April 1930:Col.536).

On 31 May 1933, Captain Bertin again proposed a motion in support of amalgamation. Besides the reasons advanced in his previous motion, he added the following:

We have to remember that we are a comparatively small community; 50 000 Europeans amongst a million natives. If we [are] going to maintain our position in the world we have to make ourselves a bigger unit or go into a bigger unit There is greater advantage in any country that is one unit having a diversity of products - in agricultural, mining and precious metals The more you have of them the less you are likely to be hit by depression in one or the other (SRLAD, 31 May 1933:Cols.2214-2215).

Later in the debate, Captain Bertin referred to institutional arrangements, and said that Rhodesia could then have a bigger parliament and would also be justified in having a second chamber or senate. As far as administrative arrangements were concerned, he held,

one Governor can easily carry on the business for Northern and Southern Rhodesia One Governor is quite sufficient; one Parliament is quite sufficient; one Civil Service is quite sufficient. You would have one Postmaster General, one director of Education, and so on. The great trouble in this territory and in most of South Africa is the overhead charges are too much for the business that is done (SRLAD, 31 May 1933:Cols.2216-2217).

Mr Godfrey Huggins, Member of the Legislative Assembly, expanded on the

constitutional advantages of amalgamating with Northern Rhodesia by saying that with a higher constitutional status, Southern Rhodesia would probably be the leader in an amalgamated state or federation. He felt that it was the duty of Southern Rhodesia to rescue fellow white kinsmen in neighbouring states from British government policy. He perceived this policy to be the elevation of black citizens into leadership positions, whether they represented the population or not. He concluded by saying that, 'we do not want to have a British Black Dominion as our nearest neighbour' (SRLAD, 31 May 1933:Cols. 2219-2220).

Discussions continued between Northern and Southern Rhodesia members elected to the respective legislatures and, in July 1934, the new Southern Rhodesia Prime Minister, Mr Godfrey Huggins, proposed a scheme to the Colonial Office for incorporation of the Copperbelt into Southern Rhodesia. This proposal was rejected by the Colonial Office.

As a consequence of continuing pressure for amalgamation and further discussions between Northern and Southern Rhodesia parliamentarians, Sir Herbert Stanley, the Southern Rhodesia Governor, submitted a memorandum to the Colonial Office in 1935, which strongly advocated, 'a central African Union of Northern and Southern Rhodesia as a counterpoise to the Afrikaner Union of South Africa' (Palley 1966:329). The result was the convening of annual Governors' Conferences between the territories, and the creation of a common Court of Appeals in 1939.

Yet another amalgamation motion was introduced on 1 April 1936 in the Legislative Assembly. It was carried after a division, and in 1937 Captain Bertin again introduced a motion in support of amalgamation. Many of the

reasons put forward were similar to those advanced previously. Captain Bertin expanded upon his vision for the institutions of government by saying that, 'amalgamation would give us a sounder Parliamentary machine We should then be able to afford a larger opposition ... we should be able to afford a Second Chamber' (SRLAD, 27 October 1937:Col.2246).

As a result of this insistence the Bledisloe Commission was appointed. It reported in 1939 on the desirability and feasibility of closer co-operation or association between Southern Rhodesia, Northern Rhodesia and Nyasaland. The Commission reported that there was a need for close and continuous co-ordination of effort in many spheres of activity but rejected federation because, 'Governments enjoying such different measures of responsibility and in such different stages of social and political development would not in our opinion achieve success' (Cmd.5949:para.474).

With regard to amalgamation as an alternative to federation, the Report said that this was an option to be kept in view. The major obstacle to amalgamation, according to the Report, was the different policies of the three administrations (that is Southern, Northern Rhodesia and Nyasaland) in dealing with their 'native populations.' In the case of Southern Rhodesia, it had progressed the furthest in the provision of certain social and development services, but in other respects it was restrictive in that it excluded Africans from certain forms of skilled employment and certain posts in the central government service.

The Report continued:

One cannot, however, overlook the fact that under any scheme of

amalgamation the Government of the combined Territory must rest mainly in the hands of those who at present direct the policy of Southern Rhodesia, and it is therefore necessary to envisage a situation where that policy might be extended in greater or lesser degree over the territories now known as Northern Rhodesia and Nyasaland (Cmd.5949:para.480).

According to the Report, in Southern and Northern Rhodesia the general idea of the European population by whom amalgamation was advocated, was that the 1923 Southern Rhodesia Constitution would apply to the combined territory (Cmd.5949:para.484). Nothing came of this proposal.

On 5 May 1943, the debate concerning Rhodesia's relationship with its neighbours took a different course. Mr P.B. Fletcher moved a motion in the Legislative Assembly that isolationism could do nothing but retard the progress of the Colony. He felt that the amalgamationists and federalists had been defeated in their endeavours by parties external to Rhodesia. He proposed: 'We can best serve the interests of Southern Rhodesia by vigorously pursuing a bold policy of planned Pan-African development' (SRLAD, 5 May 1943: Col.333). Mr Fletcher suggested that a start be made to establish a Pan-Africanist conference with the Union of South Africa, at which co-operation would be sought in the fields of economics and defence. His motion was carried.

On 23 June 1948, Mr A.R.W. Stumbles proposed a motion in support of Dominion status for the territory. He appealed for the removal of the reservations from the 1923 Constitution, limiting the government's jurisdiction over African affairs. This would have given Southern Rhodesia Dominion status. He supported

his motion by saying that:

What we need in Africa is a Central African Dominion for strengthening and carrying out the defense of the Empire, and as a hub of democracy You must have that central focal point with full authority round which other states might revolve (SRLAD, 23 June 1948:Col.1351).

Dominion status, he continued, could be followed by amalgamation or a federation of African states (SRLAD, 23 June 1948:Col.1351). The motion was carried. By 1948 the idea of federation in British Central Africa was again being put forward. After a number of representations to the British government, at the suggestion of the Southern Rhodesia Prime Minister, a newly elected Conservative government approved in November 1950 the holding of a conference of officials from the three Central African Governments, that is Southern and Northern Rhodesia and Nyasaland, on the question of federation.

This Conference, which took place in London in March 1951, recommended a federal relationship between the territories. The Conference comprised representatives from the United Kingdom, the three territorial governments and the Central African Council, the latter having been established in 1945 to promote the co-ordination of policy and action between the three territories. The Conference comprised only white representatives. According to the Conference Report, African opinion in the two northern territories and certain sections of Southern Rhodesia expressed its opposition to any form of amalgamation, as well as to any form of closer association. The majority of Europeans in Southern Rhodesia favoured a form of closer association of the three territories which entailed the establishment of a strong central

government. In Northern Rhodesia it was thought that the bulk of European opinion in the territory would be likely to support some form of closer association. In Nyasaland, European opinion, according to the Report, was less definite but had on some occasions expressed itself in favour of closer association (Cmd.8233:Chapt.2).

The Report felt that, although there were still differences in policy concerning African advancement - and here it took issue with the Bledisloe Report referred to above - these differences could no longer be considered as a valid argument against closer association (Cmd.8233:Chapt.2).

Again in 1951 a motion was proposed in the Southern Rhodesia Legislative Assembly, requesting the government to make clear the steps it proposed to take with regard to the future constitutional status of Southern Rhodesia (SRLAD, 14 November 1951:Col.3323).

A Draft Federal Scheme was prepared in a Conference held in London in April-May 1952 by representatives from the territories, the United Kingdom government, and the Central African Council. The only African representatives were J.N. Nkomo and J.Z. Shavanhu from Southern Rhodesia. On 23 June 1952 a motion was proposed in the Southern Rhodesian Legislative Assembly in support of a federation of Southern Rhodesia, Northern Rhodesia and Nyasaland. Although the motion and arguments were in support of a federation, they are suggestive of a desire amongst the white population at the time for the ultimate creation of a strong centralised authority for the region.

Some of the points made by Sir Godfrey Huggins, the then Prime Minister of Southern Rhodesia, will be referred to as being broadly representative of the

elite supporting federation or a closer union between the three territories concerned. In supporting a motion in the Legislative Assembly in favour of federation, Sir Godfrey said:

We are trying to enlarge and fortify a unit of the Empire which is at present small, thinly populated, industrially of small importance and of relatively insignificant importance in the world, into a country which is well populated, highly developed and with its immense natural resources employed to the benefit of mankind in general (SRLAD, 23 June 1952:Col.2621).

'Adequate development' he claimed, 'can be achieved only by a reasonably sized country to-day' (SRLAD, 23 June 1952:Col.2624). Later in the debate he said that another important ideal which influenced their wish to see some form of union of the territories in Central Africa was the 'importance of creating a strong British bloc ... as a much needed stabilising influence' (SRLAD, 23 June 1952:Col.2625). Further in the debate he inferred that the racial policy of 'partnership' as applied in Southern Rhodesia at the time, which he believed resulted in good relations between black and white, could set a pattern for Africa (SRLAD, 23 June 1952:Col.2625).

Huggins said that he and others believed that amalgamation resulting in a unitary state would be the best solution for the sake of simplicity and efficiency, but realised that it was not practicable in the circumstances, largely because of differences in the administration of the three territories. Huggins thus saw federation as a preliminary step towards a possible unitary state. In reiterating his preference for a unitary state, while having to opt for a federal one, he told his audience:

Remember also that any Federal Constitution must contain checks and balances which are not necessary in, or appropriate to a unitary State. These are, after all, a fair price to pay for the increased political and economic strength which the territory will gain ... (SRLAD, 2 June 1952:Col.2633).

Finally, there was a degree of ethnic solidarity in his support for federation in that he believed it could be in the interests of all races 'whereby the standards of white civilisation are maintained and those of the backward races gradually raised towards our standard' (SRLAD, 23 June 1952:Col.2651). He was implying that if it were not for federation with the North, 30 000 or more Europeans settled in Northern Rhodesia would become the subjects of black nationalist forces.

The largely white electorate of Southern Rhodesia approved of federation by 25 570 to 14 729 in a referendum held in April 1953. The federation came into being on 14 July 1953. The Southern Rhodesia Legislature surrendered somewhat more power to the Federal legislature than did the Northern Territories, since two items relating generally to Southern Rhodesia, non-African agriculture and agricultural research were made exclusively Federal, while the Northern Governments retained these powers (Palley 1966:346). The Federal Government's powers were specified in great detail and this tier of government could act in a wide field except in the area of 'Native Affairs'. The Federal Government was thus highly centralised (Palley 1966:346).

6.7.2 The issue of control

The motivation for or against unitary government at the time of federation was

the issue of control. If the white group in, for example, Southern Rhodesia stood to play a dominant role, as they were likely to in a unitary central African state, then they would support the idea of a unitary state. Considering the electoral system in operation at the time, the black population perceived that they would be dominated by Southern Rhodesian whites, and therefore rejected a unitary state. The desire and possibilities for control determined the attitude towards a unitary or federal political order.

From the end of federation in 1963, the search for constitutional links with neighbouring territories ended, and between this time and independence in 1980, limited consideration, and that only periodically, was given to the decentralisation of power within the existing Rhodesian state.

6.7.3 Unitarist sentiment during the federal era

A unitarist sentiment prevailed during the federal period. Despite Northern and Southern Rhodesia and Nyasaland being governed under a federal constitution, and having ceded certain territorial powers to a federal legislature, the future evolution of the federation was still debated. A belief persisted in establishing an even stronger central authority. In terms of a specific clause, the Federal Constitution was to be reviewed not less than seven and not more than nine years from the date of its coming into force. In response to a question posed in 1955 as to the future of the federation when it came up for review, a non-random sample of federal and territorial legislators supported a future unitary system of government for the three territories. The attitudes of both white and black legislators were determined by the question of political control. Since whites had majority

representation in the existing legislatures, they were likely to be in a strong position to control a single legislature in a unitary state.

One white federal Member of Parliament felt that 'one central government administering all its affairs was not only desirable but also essential for the advancement of all its inhabitants' (*The Next Step - Federation's Future*:66). In opposition to this viewpoint, a black M.P. stated that:

Evolution into a unitary state would diminish substantially the effective control of the British Colonial Office which at this stage and for some time to come would serve to protect the interests of the African people in most of the Federal state (*The Next Step - Federation's Future*:68).

Another black M.P., representing the indigenous population of Northern Rhodesia, said that his people ' [had] no intentions of falling under the direct rule of British Settlers'. He felt that they had more faith in the policy of Colonial Indirect Rule as applied in Northern Rhodesia at the time (*The Next Step - Federation's Future*:68).

However, a contrary view was expressed by a white Northern Rhodesian M.P. against a system of government (a unitary system),

which would most certainly be dominated by Southern Rhodesians
 Would Southern Rhodesians take kindly to a unitary system of government controlled and dominated by Northern Rhodesians? (*The Next Step - Federation's Future*:74).

A further view expressed by a white Northern Rhodesian legislator in support of a unitary form of government, was that a federal government would be expensive to operate and, it would be preferable to formulate policy for African administration locally rather than by the Colonial Office in London (*The Next Step - Federation's Future*:74).

In a later view of the federal era, Sir Garfield Todd¹, former Prime Minister of Southern Rhodesia between the years 1953-1958, felt that the federation should evolve as quickly as possible to a unitary state. He believed that the total land area of the federation was small compared with that of, for example, the USA or Australia, as was the population, comparatively speaking. Todd also believed that unitary government was economical and efficient. For these reasons he felt that a central government was what was required for the territory and he was prepared to surrender the position of Prime Minister of Southern Rhodesia to achieve this goal. He further believed that whites, at the time, felt that since they controlled the government of Southern Rhodesia, they would also control a federal government (Personal interview followed by written communication with Sir Garfield Todd, dated 20 February 1994).

In view of the fact that the Southern Rhodesia electoral system was weighted in favour of the white population, and produced a largely white legislature, it was believed that this situation would carry through into a centralised government for the three territories.

6.7.4 An assessment of Rhodesia's constitutional development

¹. A number of personal interviews were conducted on the constitutional evolution of Zimbabwe. Only some of the individuals interviewed are referred to directly in this chapter. Mr R.G. Mugabe, current President of Zimbabwe, was not accessible for an interview. A complete list of these individuals follows the list of sources consulted.

The trend in Southern Rhodesia's constitutional development from the first decade of the century to the advent of federation in 1953 was towards seeking closer constitutional links with neighbouring territories. These initiatives were discontinued from the time of the dissolution of the federation in 1963, and Southern Rhodesia then began to consider internal constitutional issues. The initiative for seeking closer constitutional links with neighbouring territories always came from the predominantly white legislature in Southern Rhodesia which, over the decades persisted in its requests.

There have been three broad motives for closer links with neighbouring territories: the desire for increasing control by the white population to address problems of insecurity; the desire to promote British values and the fear of African domination; and finally, the belief that a larger political system would result in increasing economic prosperity.

While the quest was for closer constitutional links with neighbouring territories, the tendency has been for power to continue to be centralised in a single central authority, in this case the Southern Rhodesia government. This tendency was reinforced by other factors referred to below.

6.8 CONSTITUTIONAL INITIATIVES 1965-1979

With the failure of the Central African Federation in 1963, white Rhodesians began to look inwards for constitutional solutions to secure their privileged position within their society. During this period, Rhodesia adopted three new constitutions: a 1965 constitution providing for the legal realities of the Unilateral Declaration of Independence (UDI) state, which in broad terms did not deviate much from the earlier centralised unitary 1961 constitution; a

Republican constitution implemented in 1969; and a constitution in 1979 resulting from an internal political settlement.

The 1969 constitution was framed, after the most in-depth analysis in the history of Rhodesia, from constitutional alternatives available to the country. This was the only occasion on which members of the public both black and white became involved in the detail of constitution drafting. The factors contributing towards the adoption of a centralised unitary constitution will once more be analysed in depth.

6.8.1 Report of the Constitutional Commission 1968 (The Whaley Commission)

With the failure of the *Tiger* and *Fearless* talks held between the Rhodesian and the British governments, in 1965 and 1966 respectively, to resolve the legal impasse between the two countries following the Unilateral Declaration of Independence by Rhodesia, the idea of a Republic in Rhodesia gained momentum.

A five member commission, under the chairmanship of Mr W.R. Whaley, was appointed by the Rhodesian government, to report on a suitable constitution for a Rhodesian Republic.

The terms of reference of the Whaley Commission appointed in March 1967 were to advise the Government of Rhodesia on the constitutional framework which was best suited to the sovereign independent status of Rhodesia and was calculated to protect and guarantee the rights and freedoms of all persons and communities in Rhodesia. The Commission was also given the task of ensuring the harmonious development of Rhodesia's plural society, recognising the

different types of land tenure systems in the country, and attending to the problems of economic development (Report of the Constitutional Commission 1968:1).

The report of the Whaley Commission was (as has been mentioned above) the product of the most thorough of a number of attempts at devising a new constitution for Rhodesia. Unlike other constitution-drafting exercises, in particular the procedure leading to the formulation of the 1923 Constitution, this one included evidence gathered not only from elites, but also from ordinary members of the public. Some 657 memoranda were received from individuals, authors representing groups, and local and national organisations. The recommendations were gleaned from many points of view.

As far as a future system of government was concerned, the Commission recommended

the continuance of a unitary government [state] in Rhodesia as being the system which is most suitable for this country and one which is most likely to foster the spirit amongst all Rhodesians of belonging to a single, united nation (Report of the Constitutional Commission 1968:27).

The Commission believed that there were three alternatives for Rhodesia: partition, federation and a unitary state. The Commission rejected partition on the grounds that it was not a practical proposition and that it would not receive any substantial measure of support from the main races or ethnic groups in the country (Report of the Constitutional Commission 1968:21).

The Commission said that many of the arguments in favour of retaining a unitary system in Rhodesia were arguments against a federal system of government. Unlike past discussions on the constitutional future of Rhodesia, internal federation for Rhodesia was now being considered an option. Some Commission witnesses argued for racial and non-racial federal solutions and differing divisions of power between the federal and the state authorities. The Commission rejected an internal federal system on several grounds. It felt that a rigid federal constitution would be unsuitable for Rhodesia at its particular stage of development. A unitary constitution, the Commission felt, would be more flexible and would allow for constitutional change to follow the progress of the country (Report of the Constitutional Commission 1968:24).

In rejecting federation for Rhodesia, the Commission felt that history had shown that a clear line of demarcation of powers between the various bodies of a federation was very difficult, if not impossible to achieve. It was equally difficult to make a fair distribution of powers between the constituents of a federation (Report of the Constitutional Commission 1968:24).

Other criticisms of federation were that they all originated through the coming together of sovereign independent states. This would not be the case in Rhodesia. Further, if federation was to be imposed on Rhodesia, the separate territorial states would have to be created by 'balkanisation' and built up mainly by the effort and at the financial cost of the European state and with great disruption of the services that were available to the people of Rhodesia as a whole. Federalism, the Commission said, brought with it a more costly form of constitution and government (Report of the Constitutional Commission 1968:25).

The Commission also remarked that federations elsewhere in Africa had not worked and racial federations could be platforms for conflict between one state and another. Moreover, the Report mentioned the possibility of secession by one state or another.

Some of the arguments put forward in favour of a unitary system were as follows,

a unitary system is a stronger form of government [constitutional form] than the federal system because power is combined in one authoritative body ... Rhodesia already possesses a strong unitary [constitutional] form and it would be foolish to exchange this for a weaker system ... the unitary form has been the pattern followed by Rhodesia in the past. It is understood by the people and there is no justification for abandoning it in favour of a federal system which would be a radical departure from what we have been accustomed to ... (Report of the Constitutional Commission 1968:26).

In a written memorandum submitted to the Commission by a Law Officer, some of these points are re-emphasised. The evidence given to the Commission by this Law Officer emphasised the familiarity of the substantial white minority with the existing parliamentary form of government. The Law Officer also argued that if another form of government [constitutional form] were adopted, like the American Presidential system with its checks and balances, it would mean that:

Europeans and if they are to be allowed to share political power, other races also, will require education in the manipulation of unfamiliar machinery ... change from the Westminster kind of constitution employed in Rhodesia entails a break in political continuity, with unforeseeable consequences (Whaley private papers, Memorandum dated 12 October 1967).

The Memorandum continued:

In federal as opposed to unitary states, African experience has also suggested that the clash between parties from different regions will lead to the collapse of parliamentary democracy [M]embers of the commission will doubtless be familiar with the stresses and strains which led to the dissolution of the Federation of Rhodesia and Nyasaland, and the fate of federal Nigeria has illustrated centrifugal forces set up by the tension between autocratic Muslim Emirates to the north, Yorubas under less authoritarian rulers in the south west, and sophisticated Ibos associated in clans in the south east (Whaley private papers, Memorandum dated 12 October 1967).

Further arguments were presented in favour of a unitary constitution, including the promotion of a common loyalty to the nation, unimpaired by allegiance to provincial, cantonal or other geographical divisions of the country (Report of the Constitutional Commission 1968:26). The Report also referred to the geographical extent, population density and financial resources of the country which it considered to be relatively small, therefore making it appropriate that overall control should be placed in the hands of

a single government unit. The Report referred to a tendency towards over-centralisation of powers in a unitary state. It felt that this trend could be reversed through decentralisation while overall control was still retained in the hands of a central authority. The Report continued:

A strong central government is necessary to guide and control in a uniform manner. Rhodesia cannot afford to have various autonomous bodies pulling in different directions ... most functions of government contain some elements which, for the good of all, should be administered centrally and uniformly (Report of the Constitutional Commission 1968:26-27).

The Report does acknowledge that occasions arise when decisions by lower tiers of government should be overridden in the national interest. In terms of the recommendations of the Report, Rhodesia continued with a unitary constitutional form, as a Republic from 1969.

The Whaley Commission undertook its investigations in a 'climate of opinion' different from that which prevailed when previous constitutions had been drafted. By 1969 both Northern Rhodesia (Zambia) and Nyasaland (Malawi) had gained independence as sovereign independent states under African leadership. The issue of amalgamation or federation was no longer being considered. Hence the consideration by Rhodesians of internal forms of decentralisation - more particularly internal federal options. However, unitarist sentiment and the practical realities in the country ultimately prevailed. Moreover, the Commission undertook its investigations when sanctions were being imposed on Rhodesia, which (as mentioned below) necessitated a greater role for central government.

6.9 THE INCREASING SCOPE OF THE SOUTHERN RHODESIAN GOVERNMENT

Leys (1959), Murray (1970) and Herbst (1990) detail how the unitary constitution and the increasingly centralised state were utilised by certain interests, and particularly white ones up until 1980. The need for the increasingly centralised state was reinforced over the decades by Rhodesia's uncertain relationship with its neighbours.

Leys maintains that the structure of government, as compared with that in 1923,

still reflects the political life of the European population alone ... the relationship between the European community and the government is exceptionally close. This is expressed in several ways; one of the most striking is the official intermeshing of the formal organs of government with unofficial interest organizations in such a way that the distinction between the 'official' and 'unofficial' sectors of public life is sometimes particularly difficult to draw (1959:37).

Leys points out that from its earliest days, the government of Southern Rhodesia had been modelled in the image of a developed West European state, in all its ramification. But the structure had rested only on the financial and human resources of a small white community in a relatively poor and undeveloped country (1959:57). Moreover, the white population he characterised as being remarkable for its political solidarity, since there was an absence of ethnic and linguistic barriers (1959:88). It was predominantly British in origin and small, relative to the African population. In 1953, the European

population numbered 158 000, against an African population of 2 130 000. A corollary of this political solidarity and minority status amongst the white population was the maintenance of a centralised unitary state.

In the years immediately after the attainment of self-rule in 1923, the whites began to construct, according to Herbst (1990), a highly interventionist state to further their interests. The main motivation for strengthening the colonial state was the insecurity of the settlers in the face of a hostile environment. The colonists had to look towards the state early on for protection against economic competition from Africans, and they used the state to place the Africans in a permanently disadvantaged position (Herbst 1990:18).

Herbst illustrates this point by referring, for example, to the Industrial Conciliation Act of 1934, which explicitly excluded Africans from the definition of 'employee'. Further, in the 1930s, the government systematically strengthened the labour reserve system by preventing Africans from moving into prospecting and mining and from competing on even terms in beef production, as well as erecting barriers that excluded blacks from the domestic maize market (Herbst 1990:18). Leys reinforces this view by claiming that, in the first forty years of this century, every available artificial means was employed to squeeze from the country a standard of life which would increase the European population and make it secure (Leys 1959:290). Murray adds to this by saying that before the depression the government limited its activities and trusted free enterprise and private organisation to achieve economic objectives. With the failure of the tobacco crop in 1928 and the world-wide depression of the early 1930s, government became involved in the economy over a wider field. It began to regulate and control agricultural

marketing and production, and gave direct assistance to prospecting and mining.

The small economic base of Rhodesia's economy, according to Herbst, also meant that it was extremely vulnerable to changes in the world economy. The whites therefore used the state as a buffer against the threatening international environment (Herbst 1990:18-19). Herbst illustrates this point by referring to the period after the Great Depression when the white state began,

to regulate control and eventually more systematically orchestrate economic policy. For this it needed to exercise power usable in a wide range of spheres. Interventionist legislation was thus set in motion and applied in the determination of prices (eg. over maize), quotas, balances in the tobacco market, subsidies (eg. to small-worker gold mines), employment (through labour-intensive public works schemes), tariffs and administrative protections, and new taxes over previously protected revenue sources (1990:19).

In addition, the state established public enterprises which it considered vital to the colony's economy. By 1945 the state had established electrical power stations, a Cold Storage Commission, the Rhodesian Iron and Steel Corporation foundries, and the Sugar Industry Board's Triangle estate.

From the post World War II period onwards, the state intervened increasingly in the economy in order to secure the interests of the whites. In the 1950s, the government enacted comprehensive price controls over large parts of the economy (Herbst 1990:22). White farmers were the beneficiaries of these

measures, in that the system set the prices for many of their crops and guaranteed the purchase of these. By the 1950s the white population was

clearly developing a system best described as 'Socialism-for-the whites'... the state sought to provide an economic life for whites which was basically shock-free with a near guarantee of an extraordinarily high standard of living (Herbst 1990:22).

Through this process of consolidating white power, government in turn became more powerful. It had the legal power by the 1950s both at the territorial and federal levels, to act over a far wider field than it had in 1923. Further, government had increased its administrative capacity by, for example, building up executive departments, the introduction of a standing army, and the development of lines of communication with the public through, for example, broadcasting channels. The government, moreover, increased its ability to offer inducements in that it could offer patronage in setting up government boards and commissions.

By the 1950s, the government developed a greater cohesion than it had before World War II, partly as a result of its increased capacity and the weak position of representative associations. In addition, according to Murray, the general economic situation required closer co-ordination in government. It was necessary to determine how a wide range of scarce resources were to be allocated, and to plan, to a limited degree, the economic development of the colony (1970:349).

Because of these developments, the implications for European politics were that a greater premium was placed on control over the government. The need for

such control was accentuated in the 1950s and early 1960s by the aim of African political movements to wrest that control from the Europeans (Murray 1970:359). The corollary to this process was that a strong central government was necessary and the idea of decentralised political structures could simply not seriously be entertained.

The scope of the state was further extended during the UDI years 1965-1980. Economic sanctions were imposed against Rhodesia by the international community, which necessitated the use of 'dictatorial powers' (Herbst 1990:26) to further the state's financial and political interests. The necessity of conducting a brutal civil war from the early 1970s against black nationalist guerrillas further extended the scope and reach of the state, not only the economy but the lives of the white population, and a significant portion of the black population, had to be co-ordinated by the state [government] (Herbst 1990:26). Thus, during the period 1965 to 1980, governmental structures assumed additional functions. Centripetal forces supported the centralised unitary state. Economic and military issues dominated Rhodesian society during that time.

Economic sanctions were imposed by Britain in a staggered fashion over a number of years rather than immediately and comprehensively. This resulted in many white Rhodesians, including those who had not supported UDI or the governing Rhodesian Front party, committing themselves to using, 'every ounce of resourcefulness, courage and cunning they had in order to outwit Britain in the economic war' (Flower 1987:62). The government, according to Flower (1987), showed considerable skill in managing the economy and fighting sanctions. In this it received great assistance from both the Civil Service and parastatals, such as the Grain Marketing Board and the Cold Storage

Commission. It also established new parastatals specifically allocated the task of evading sanctions by planning the diversification of commerce and industry (Flower 1987:71-72). The fighting of sanctions, according to Mr Ian Smith, former Prime Minister of Rhodesia, 'received the support from all' (Personal interview with Mr Ian Smith, September 1993). Flower comments that, 'Rhodesia had won the economic war long before 1972 through high endeavour, resourcefulness, and great pride in national achievement' (1987:77).

Gann and Henriksen (1981) describe post-UDI Rhodesia as a 'Counter insurgency State' distinguished by 'a unity of effort between military and civilian branches in the political and military spheres, respectively' (Gann and Henriksen 1981:72). During the counter-insurgency war which began in about 1972, the Prime Minister, Mr Ian Smith, chaired what was referred to as the Defence Council. Final responsibility for the war effort thus became located in a centralised Defence Council. 'The responsibility for the conduct of the war rested on the Prime Minister. One did not have the delegation to ministers as in normal times' (Personal interview with Mr Ian Smith, September 1993). The emergency measures necessary in war situations further centralised power, as decisions had to be taken quickly by a single authority.

The ZANU(PF) government which took over power in 1980 inherited a strong centralised unitary state which coincided with its political interest in removing total white control within the state and its belief in a centrally planned economy.

6.10 THE CONSTITUTION OF ZIMBABWE (LANCASTER HOUSE CONSTITUTION) - *THE TERMINATION STAGE*

Upon the adoption of the Zimbabwe Constitution 1980, the country achieved the status of an internationally recognised sovereign independent state. What is important here is that although new circumstantial factors prevailed as compared with those operating during previous constitution-drafting exercises, the centralised unitary constitution adopted was similar to those implemented at the time of responsible government in 1923, and subsequently.

Zimbabwe's independence constitution was negotiated at Lancaster House in London between September and December 1979. A new set of factors constituted the climate of opinion under which the Lancaster House Constitution was drafted. These included a longer constitutional inheritance; the war; black-white relations; sanctions; and the attitude of the British government.

6.10.1 Lancaster House - the run-up to the formal proceedings

Two elections in 1979 provided an opportunity for resolving the Rhodesian constitutional dispute with Britain and bringing to an end the civil war in Rhodesia. Bishop A.T. Muzorewa was elected Prime Minister of Zimbabwe-Rhodesia in April 1979 in terms of a new internally negotiated constitution, and Mrs Margaret Thatcher, leader of the Conservative Party in Britain, was elected Prime Minister of the United Kingdom in June of that year (Stedman 1991:166-167).

There were several issues at stake at the time. The Muzorewa government desperately needed the lifting of sanctions and the granting of

internationally recognised independence; the Conservative government wished to dispose of the Rhodesian issue so that it could concentrate its energies on other more pressing matters; and the Patriotic Front, consisting of Mr Robert Mugabe's ZANU and Mr Joshua Nkomo's ZAPU movements, believed, given the chance, that they could win an election in the country against the internal parties.

The British recognised that neither side would ever reach an agreement if left to its own devices. The British, according to Stedman, would therefore have to decide in advance what the most polarising issues in the conflict were, and then present to the participants what they believed to be the only acceptable solution in order to elicit agreement from them (Stedman 1991:169).

In August of 1979, a Commonwealth Conference took place in Lusaka, Zambia. This Conference was preceded by an intense round of diplomatic activity on the part of the British government to test the degree of acceptability of the 1979 internal Zimbabwe-Rhodesia settlement amongst African leaders. In response to this activity, it was decided to form a working group of Commonwealth members, to formulate a set of principles which would provide the basis for a broadly acceptable Rhodesian settlement (Davidow 1984:31). The concern reflected in the set of principles focused on the control of the traditional central authority, namely the government situated in Salisbury. These principles referred to the need for 'independence' and 'majority rule', to 'appropriate safeguards for minorities' and 'the Government' (Davidow 1984:32).

The three parties to the Rhodesian dispute, namely, the British, the Salisbury delegation, and the Patriotic Front delegations, met at Lancaster House on 10 September 1979. According to Davidow, because the parties were so far apart

on most issues, the British decided that traditional negotiating patterns of establishing opening positions and trading concessions toward an acceptable midpoint would not work. Instead, Lord Carrington, the British Foreign Secretary who assumed responsibility for the negotiations, would take the initiative, offer at each stage an outline plan, amend it as much as he believed practicable on the basis of the responses of the other delegations, and then present a final detailed proposal to which he would, if necessary, demand a response (1984:38). Some of the British principles were set out in an opening address by Lord Carrington, the British Foreign Secretary. He drew the attention of those present, to the principles espoused at the earlier Lusaka Commonwealth Conference, which, if accepted, would result in Rhodesia's gaining British and Commonwealth international acceptance and independence. Lord Carrington also indicated that the British Government had accepted its constitutional responsibility to bring Rhodesia to legal independence on the basis of justice and democracy, by putting forward constitutional principles which had formed the basis for other independence constitutions in Africa and elsewhere (C.7802:3-6). Precedent thus played an important role in this process.

Further elaborating on these principles, Lord Carrington stated

the principle of majority rule must be maintained and guaranteed ... there should be immediate improvement in the political status of the African population ... we must ensure that, regardless of race, there is no oppression of majority by minority or of minority by majority; and what is agreed must be shown to be acceptable to the people of Rhodesia (Cmnd.7802:6).

Mr Joshua Nkomo, acting on behalf of the Patriotic Front allies, outlined their constitutional principles. Amongst those stated were: that Zimbabwe should be a sovereign republic in which the sovereign nation pursues its own destiny, totally unshackled by any fetters or constraints; a sovereign Zimbabwean Republic should, acting through its own freely chosen representatives in parliament, be free and fully vested with the power to exercise complete dominion over its resources from time to time and as the need arose; Zimbabwe's chosen representatives should be free to reorganise their social, political and economic institutions and structures and be free to shape their own destiny as a nation, without having to pander to any racial, ethnic, religious, social or other interests or differences (Cmnd.7802:9-12).

Bishop Muzorewa, leader of the internal delegation said in his address:

We sincerely trust that you will not insist on us making changes to our constitution, which is already working very well, merely for the sake of appeasing other countries who do not appreciate the position in Zimbabwe Rhodesia (Cmnd.7802:15).

The 1979 Zimbabwe-Rhodesia Constitution provided for a centralised unitary system of government. Similarly the 1980 Independence Constitution, agreed to at Lancaster House on 21 December 1979, provided for a parliament which would have full legislative powers for Zimbabwe, meaning that it operated under a unitary constitution (Cmnd.7802:27).

The 1980 Constitution of Zimbabwe was therefore a compromise document drafted to placate the British government, the Zimbabwe-Rhodesia delegation, the

Patriotic Front, and the international community. It retained and built on the centralised unitary tradition that had evolved in Rhodesia from the time of Company rule, and well as the British tradition of devising, in general (there were exceptions like that of Nigeria), centralised unitary constitutions for its former colonies.

The negotiations were, in effect, a struggle for power at the centre, and the struggle for power between white rulers and black nationalist groupings; and from 1979 a multiracial administration considered to be illegal by the international community, and black nationalist forces. Former Prime Minister, Ian Smith, described the negotiation process as 'a question of how many whites and how many blacks would have a say in central government' (Personal Interview with Mr Ian Smith, October 1992).

The focus in the negotiating process was therefore on the central authority in Zimbabwe. A sense of urgency was built into the negotiating process through Zimbabwe-Rhodesia's need for the lifting of sanctions and international recognition, and the British government's international reputation and the domestic divisiveness of the issue. The simplest and most certain path to resolving the dispute was through the adoption of a conventional Westminster centralised unitary constitution for Zimbabwe.

In early 1980, ZANU(PF) published its Election Manifesto which gives some insight into its thinking which prevailed at the preceding Lancaster House negotiations. The Party was formed in 1963. ZANU(PF) described its policy in various ways as, fighting for the liberation of Zimbabwe and the establishment of a nationalist, socialist Pan-Africanist republic. The implications of this policy was the confirmation of the need for a centralised unitary state.

ZANU(PF) moreover pledged itself to 'promote national consciousness and the unity of all our people', the 'complete unification of the African continent' and 'the sense of national belonging ... should submerge and destroy tribal, regionalistic and racial animosity' (ZANU(PF) 1980 Election Manifesto). ZANU (PF) policy was therefore very much in keeping with African socialist doctrine as described in chapter 4. The emphasis was on centralisation to achieve political, social and economic goals.

6.11 CONCLUSION

The centralised unitary constitutions adopted by successive regimes in Rhodesia were the products of a complex interplay of historical precedents and circumstantial factors. They were, moreover, the product of a drive for domination of the political decision-making processes by political elites. If white political elites perceived that they would be able to achieve their aims in a centralised unitary state, then they were prepared to support such a constitutional form. Similarly, when political circumstances and franchise qualifications changed, and black political groupings were able to dominate the state, they too accepted a unitary constitutional order to achieve their aims.

Until the end of federation in 1963, the centripetal forces behind the incorporation of Rhodesia into greater political unions, as well as simple practical realities, put a brake on any form of decentralisation. However, with the subsidence of these moves, decentralisation again became a possibility, while centripetal forces remained strong within the territory, resulting in the 1965, 1969, 1979 and 1980 centralised unitary constitutions. The Southern Rhodesia (Constitution) Act, 1961, passed by the British

Parliament, simply provided for the amendment of the 1923 Constitution by Order-in-Council: the basic form remained.

Habit and precedent became vital factors in shaping Rhodesia's constitutional development, which followed the basic unitary form of earlier constitutions. As far as the distribution of administrative power was concerned, it was simply assumed that it should reside in the capital city, Harare (formerly Salisbury), which had first been settled in 1890.

In the 1979 negotiations, which led to the adoption of the Zimbabwe Constitution, the negotiating parties were performing under pressure: the Muzorewa government wanted sanctions lifted and the war ended; the Patriotic Front wished to govern Zimbabwe; and the British government to dispense with the Rhodesian issue. There was, therefore, little room for innovative thinking on constitutional issues. The focus was on controlling the inherited centralised unitary state. The early colonial constitutional legacy, built upon white insecurity and fear, left its mark on the constitutional form up until independence in 1980.

Palley, in her definitive study, *The Constitutional History and law of Southern Rhodesia 1888-1965*, adopts a similar hypothesis to the first one referred to above. She claims that, by the end of 1898, the future structure of government had been laid down. The major institutions, instruments of administration, and legislative policies, most of which have endured until the present day, were already in place (1966:155). During the early settlement period, economic factors including the profitability of the BSAC ensured that the administration of the colony remained small and centralised. This proves the first hypothesis referred to above.

Greater societal centripetal forces have contributed towards the maintenance of a centralised unitary constitution and have minimised any centrifugal forces, which may have contributed towards a decentralised constitutional dispensation during the history of the country up until independence. Strong political and economic arguments have been advanced in favour of a closer relationship with neighbouring states and this has meant, by implication, the creation and strengthening of centralised authorities through the strengthening of centripetal forces. This proves the second hypothesis referred to above.

The existence of a belief in the need for a strong centralised authority amongst local political elites in Rhodesia/Zimbabwe is important in determining the country's centralised unitary constitutional form. As a corollary to this, the need for a strong centralised government was underpinned by the development, over the decades, of a unitarist political culture. Further, the desire for a centralised unitary state was supported by the ZANU(PF) party ideological make up which advocated a socialist political and economic order for the country. This combined with the continued existence of a unitarist political culture particularly amongst the white population group up until 1980, served also to reinforce the unitary state. This proves the third hypothesis referred to above.

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SRLAD. Southern Rhodesia Legislative Assembly Debates

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Interviews were conducted with the following:

Prof S. Bhebe - Pro Vice-Chancellor, University of Zimbabwe.

Mr A.I.A. Findlay - Former member of the Rhodesian security forces.

Mr H.R.G. Howman - Former Cabinet Minister, Rhodesia.

Mr N. Loney - Former Rhodesian Front member.

Dr J. Makumbe - Department of Political and Administrative Studies, University of Zimbabwe.

Dr I. Mandaza - Executive Director SAPES Trust, Harare.

- Prof J.N. Moyo - Former Member of the Department of Political and Administrative Studies, University of Zimbabwe.
- Dr K.D. Manungo - Department of History, University of Zimbabwe.
- Prof M. Murphree - Institute for Social and Economic Research, University of Zimbabwe.
- Dr S.M. Nkiwane - Chairman: Department of Political and Administrative Studies, University of Zimbabwe.
- Prof H. Patel - Department of Political and Administrative Studies, University of Zimbabwe.
- Mr B. Raftopolous - Zimbabwe Institute of Development Studies.
- Dr A.M. Rukobo - Director, Zimbabwe Institute of Development Studies.
- Mr Gerald Smith - Former Member, Parliament of Zimbabwe.
- Mr I.D. Smith - Former Prime Minister of Rhodesia.
- Sir R.S. Garfield Todd - Prime Minister of Southern Rhodesia and former Zimbabwean Senator.
- Mrs S.G. Van Reenen - Former Zimbabwean Senator.
- Mr W.R. Whaley - Chairman of the Rhodesian Constitutional Committee and former Zimbabwean Senator.

Chapter 7

NAMIBIA (SOUTH WEST AFRICA)

7.1 INTRODUCTION

Namibia/South West Africa became a sovereign, independent, centralised, unitary state on 21 March 1990.

The Preamble to the Namibian Constitution, states that: '... we the people of Namibia - ... have resolved to constitute the Republic of Namibia as a sovereign, secular, democratic and unitary State ...', and Article 1 (1) that: 'The Republic of Namibia is hereby established as a sovereign, secular, democratic and unitary state founded upon the principles of democracy, the rule of law and justice for all' (Van Wyk et al.1991:164-165). Although these two clauses claim that the country is a unitary state, one needs to look at other provisions of the constitution for evidence that this is, in fact, the case.

Two categories of criteria as set out in chapter 2 above, have been utilised for identifying a centralised unitary state. In terms of the first criteria, the political-legal criteria, the body of the Namibian Constitution does provide for a supreme central government, primarily in terms of Article 44, and it does not provide for subsidiary sovereign bodies. However, since this criterion for the existence of a centralised unitary state is not as clear-cut in the Namibian Constitution as in the constitutions of Botswana and Zimbabwe, a closer analysis of this provision needs to be made.

In terms of Article 102 of the Namibian Constitution, provision is made for

'Structures of Regional and Local Government'. This Article enables an ordinary Act of Parliament to provide for the division of Namibia into regional and local units, and the delineation of the boundaries of those regions. No provision is made in the Constitution prescribing a minimum or maximum number of regions.

In terms of Article 108 of the Namibian Constitution, Regional Councils are empowered to elect members to the National Council. A National Council is established in terms of Article 68 of the Constitution and is intended to function essentially as a second chamber of the National Assembly. The only original power that the Regional Councils have in terms of Article 108 (a) of the Constitution is to elect members to the National Council. This power can only be repealed or amended through a special amending procedure as provided for in terms of Article 132 of the Constitution. This Article stipulates that the repeal and/or amendment of the Constitution shall be passed by a two-thirds majority of the members of the National Assembly, and a two-thirds majority of the members of the National Council.

The functioning of the regions in so far as the election of members to the National Council is concerned is therefore somewhat tenuous, in that the operation of this procedure is partly dependent upon the provisions of an ordinary Act of Parliament, which can be amended or repealed by ordinary legislation. The remainder of the powers that the Regional Councils may exercise are either delegated by the President or assigned by an Act of Parliament. It is maintained therefore that, although the Regional Councils do possess a single original power in terms of Article 108 (a) of the Constitution, the execution thereof is subject to an ordinary Act of Parliament and is limited solely to the election of members of the National

Council. This Article is therefore not a substantial concession to the sovereignty of subsidiary authorities. In terms of these criteria, it is maintained that the general orientation of the Namibian Constitution provides for a centralised unitary system of government.

In terms of the two fiscal criteria, approximately 89 percent of government expenditure was expended by the central government as compared with regional and local authorities in the 1992-1993 financial year. In the same financial year, total current and capital expenditure at the central government level amounted to 44,6 percent of Gross Domestic Product (GDP). In terms of both these criteria, the Namibian state can be considered to be centralised (Namibia Public Expenditure Review, 1994).

This chapter attempts to describe and explain the reasons for the establishment of a centralised unitary state at the time of Namibia's independence, as opposed to a decentralised unitary state, federation or partitioning of the territory.

7.2 NOMENCLATURE

The territory since its first settlement by Europeans, has been referred to as 'South West Africa', 'South West Africa/Namibia', and 'Namibia'. In the last few decades, and particularly since 1968, when the United Nations General Assembly renamed the territory as 'Namibia', it has been referred to mostly by the international community as 'Namibia'. When the territory was referred to as 'South West Africa' or 'South West Africa/Namibia', it was mostly by the South African authorities, and political parties internal to the territory. The terms will be used interchangeably, depending upon the source

being quoted and the period under discussion.

7.3 ASSUMPTIONS

In the various discussions on the territory, direct references to a unitary Namibia seldom specify what is meant by the term as a constitutional form. The use of this term for the purposes of this thesis is taken to refer to the constitutional form as outlined in chapter 2 above. References are also made to a 'united Namibia', the 'unity of Namibia', or 'Namibia as a national unit'. When referring to these three terms, the assumption is that they refer to 'unity', 'unification' and a unitary state, as defined in chapter 2. It is also assumed that these notions include the twelve Penguin Islands and the enclave of Walvis Bay in the territory. The Penguin Islands and Walvis Bay became part of the Colony of the Cape of Good Hope prior to Union, and part of the Union of South Africa and the Republic of South Africa in 1910 and 1961, respectively.

The South African government's racial policy as applied in the territory has been referred to in various ways. Beginning with the Odendaal Commission Report of 1964 (referred to below), this policy has been referred to by various labels including, 'Apartheid', 'ethnic fragmentation', the 'Bantustan' or 'homelands policy', 'separate development' or as a 'geo-political' solution. Accordingly this policy will be referred to below by a variety of different terms, depending upon the source, but all these will be taken to refer to the South African government's policy as applied to the black population of the territory.

7.4 PURPOSE, SCOPE, SOURCES, CIRCUMSTANTIAL FACTORS, AND HYPOTHESES

7.4.1 Purpose and Scope

The purpose of this chapter is to describe and explain the origins of the centralised unitary state as embodied in the Articles of the Namibian Constitution referred to above. The period beginning in the 1880s with early European settlement will be taken as the starting point, and the period ending with the adoption of the Independence Constitution in the Constituent Assembly in 1990, as the concluding point.

7.4.2 Sources

A number of sources will be utilised, including academic texts, United Nations Security Council and General Assembly Resolutions, official reports, documents from research institutes and party political documents, and interviews¹.

7.4.3 Circumstantial factors

The origins of the centralised unitary nature of Namibia's 1990 Independence Constitution can be traced to both external and internal factors. The external origins can be found in the nature of the original form of German rule, in subsequent South African rule, and in United Nations resolutions and policy positions taken, for example, by the Western Powers, the Namibia Institute and

¹. A number of interviews were conducted on the constitutional evolution of the territory. Only some of them are referred to in the chapter itself. A full list of interviews conducted is included following the list of sources consulted.

external political movements. The internal origins can be found in the policies of the political parties which produced manifestos, and in some cases participated in various constitution-making structures, like the Turnhalle Constitutional Conference, the Multi-Party Conference, the Constituent Assembly which formulated the final Constitution, and the physical nature of the territory.

Namibia is a vast territory covering 824 269 sq km, or nearly 3 percent of the total land mass of the continent, and its population comprises 0,2 percent of the population of Africa. Up to 30 percent of Namibia's Gross Domestic Product (GDP) is derived from mining operations. Namibia in 1991 had a GDP per capita of about \$1400, as compared with \$2600 for South Africa. It is therefore a relatively poor country (Handbook of the Nations 1994).

The ultimate political destiny of the territory has been a matter of intense controversy, beginning in the second decade of the twentieth century with its occupation by South African forces. The destiny of the territory became an international issue in 1920, with the awarding of a League of Nations Mandate to the South African government to administer it for an unspecified period of time. The destiny of the territory became a more prominent international issue from the late 1940s, as a result of the South African government's desire to incorporate it into the Union of South Africa.

The territory retained its prominence in the international community as a result of the imposition by the South African government of the policy of separate development. This resulted in a counter response from the international community and internal and external South West African political parties. The rise of African supported political parties in the territory from

about the mid-1950s coincided with the rise of African nationalism in most of Africa and thus added to the controversy over the future destiny of the territory.

Although independence was achieved almost thirty years after most former colonies in Africa, that is in 1990, black supported political movements took their cues, like the need for nation-building, and the general acceptance of the appropriateness of a unitary state, from other independent states on the continent.

7.4.4 Hypotheses

The following five hypotheses are made:

1. That the centralised unitary state had its genesis in the era of German colonial rule.
2. That the centralised unitary state was reinforced by South African rule and proposals for incorporation right up until the 1980s.
3. That the adoption of a centralised unitary constitution for Namibia was partly a reaction against the imposition of Separate Development policy in the territory.
4. That the adoption of a centralised unitary constitution was also largely a product of Swapo's ideological orientation as a dominant liberation movement with a strong support base

amongst the Owambo group, which was the largest ethnic group in the territory.

5. That the final constitution was the outcome of a trial of strength between the international community and SWAPO, and the internal parties supported by the South African government, with the international community and SWAPO being the stronger and ultimately succeeding in establishing a centralised unitary state, with minor compromises being offered to accommodate internal parties in order to facilitate a nation-building process.

7.5 THEORETICAL SCHEME

This chapter follows Etzioni's four-stage conceptual scheme as modified in chapter 3 above.

- i) *The pre-centralised stage (1884-1894)* corresponds with the early settlement of the territory and the establishment of German rule.
- ii) *The centralisation stage (1895-1945)* corresponds with the consolidation of German rule, followed by South African military rule under the League of Nations Mandate and early attempts at incorporation.
- iii) *The take-off stage (1946-1966)* corresponds with the South African government's proposal to incorporate the territory, the assumption of power by the National Party in South Africa, closer

administrative control by the South African government, and United Nations Resolutions and the international community support for various efforts to create an independent unitary state.

- iv) *The termination stage (1967-1990)* corresponds with the acceptance of a centralised unitary state brokered by the international community, and the adoption of a constitution in 1990 by an elected Constituent Assembly, for an independent Namibia.

7.6 SOUTH WEST AFRICA 1884-1894 - *THE PRE-CENTRALISED STAGE*

The foundations for centralised rule were laid partly during the period of German colonial rule in the latter part of the nineteenth century. In the mid-nineteenth century the territory, of what was to become South West Africa, was settled by various indigenous groupings and through an influx of missionaries, in particular members of the Rhenish Mission. This Mission performed a number of important political roles, including intervention in inter-tribal rivalries. In this way it became associated with later German colonial rule. Early missionary activity was also accompanied by the establishment of trade links between the Cape and the territory from about the end of the eighteenth century. As a result of threats to trade routes from local rivalries, and the need for the preservation of these links and existing missionary activities, it became apparent that a third force was necessary to achieve this latter objective. British and Cape interests in trade nevertheless waned in the 1880s, and this paved the way for German colonial rule.

As a result of these circumstances, and in particular conflict between the Nama and the Herero between the years 1870-1890, the Rhenish Missionaries

requested protection from the British government at the Cape, as well as the German government. The British government responded by taking possession of Walvis Bay in 1878, and in 1882, a German merchant named Lüderitz took the initiative and established a commercial post at Angra Pequena. In 1884 the German Chancellor, Bismarck, in turn declared all the land occupied by Lüderitz to be under the protection of Germany. At the Berlin Conference (1884-1885), the coastline between the Orange River in the south, and the Kunene River in the north was recognised as a German interest (Bley 1971; Du Pisani 1986). These events were to have fundamental implications for the later political and economic development of the territory.

The greater part of South West Africa became a German Colony in 1893, and the settlers ensured that Berlin enforced a policy of economic and political protection of the indigenous inhabitants of the territory. 'Schutzverträge' or protection treaties were imposed on the various population groups, a policy which, while it ensured political and economic control over these groups, was also intended to protect them from one another. These protection treaties fragmented the leadership of the indigenous population and undermined its political autonomy (Du Pisani 1986:25). This marked the beginning of control by a central authority.

Theodor Leutwein was appointed Governor of the territory in 1898 by the German authorities, and was given the brief of preserving and strengthening the military relationship between the German forces and the indigenous population. European expansion was not restricted in terms of this brief, and little regard was had for the desire of traditional leaders to preserve their identities. Leutwein, in the process, attempted to have himself recognised as a representative of a legitimate government, and as a consequence the black

inhabitants fell under a normal state system bound by a constitution and statutes. Leutwein also embarked upon the building of a comprehensive and efficient bureaucratic framework and, moreover, held the belief that the economic exploitation of the territory could only be undertaken in a planned and centralised manner (Bley 1971). Further, according to Bley,

the colony was, from a climatic point of view, suitable for more dispersed settlement than in the tropics, and this again presupposed some central state authority to protect and promote the interests of individual settlers (1971:7).

For Leutwein, there was an immediate and close connection between economic efficiency and centralised state control (Bley 1971:7).

However, German administration was not imposed to the same degree throughout the territory. It was implemented more successfully in the central and southern parts, as these areas, referred to as the 'Police Zone', were more readily accessible. With the exception of the Caprivi Strip, which had a limited form of administration from 1910 onwards, the other areas to the north of the Police Zone remained relatively untouched. This was also because of the disruptive Herero and Nama rebellions (1902-1907), a lack of personnel, poor communications, a small European population, and inadequate transport facilities (Du Pisani 1986:23).

Thus, during this early period of German rule, a form of centralised administration and control was seen as necessary for the pursuit of German interests in the central and southern parts of the territory.

7.7 FOUNDATIONS OF THE CENTRALISED UNITARY STATE 1895-1946 - *THE CENTRALISATION STAGE*

From about 1895 the administrative system of the territory began to take shape. Three administrative districts were created, with independent divisions within these districts. The organisation of the army followed a similar pattern with the establishment of an expanded centralised administration in Windhoek. In 1899 Advisory Councils were created for these districts, which were elected by the German population. Leutwein advocated the establishment of an administrative state modelled along German lines. Windhoek became the capital and centre of this state and exuded a sense of domination and control over the African population of the territory.

By 1907, according to Bley (1971), the point had been reached at which every European exercised private police functions over the African population. The settler population accepted that there was a legal basis for their authoritarian relationship with the indigenous population. Although there was, apparently in practice, a united front between the government and the European population, the settlers believed that it was their right, rather than that of the government or the Reichstag, to rule the African population. As time progressed, the settler population became an increasingly important political force in the territory; the distinction between 'native' and domestic policy was removed, both becoming the responsibility of the settlers.

By about 1909, a programme of self-government had been devised for the territory. However, the relationship between the settlers, the South West African administration and Germany was at this time controversial and troubled. A strong sense of national awareness characterised the settler

population. Loyalties were divided between Germany and the territory, and in particular values concerning their personal and economic lives were transferred to the territory (Bley 1971).

Bley writes of the psychological effects of military conquest, the influence of which impacted on centralised white control of the territory. He refers to the military conquest of the indigenous population and the accompanying growing totalitarian tendency amongst the settler population towards the African population. Attempts were made by the settlers to divest Africans of their national characteristics and deny them any freedom (1971:202).

In South West Africa he explains,

one finds a racial, social, and bureaucratic predisposition to totalitarianism; all of them connected with the position of the Africans, who were, as objects of German rule, 'coloureds', 'workers', and members of tribes that had been disbanded. Socio-economic, military, and quasi-biological factors were thus mobilised as instruments of totalitarian rule (Bley 1971:224).

This attitude affected the whole area of public, economic, social and even private life.

At the end of German rule in South West Africa, 'state control reached a point at which every aspect of the Africans' life was subordinated to the Europeans' search for power and security ...' (Bley 1971:282). Absolute control over the South West African territory was thus exercised within a formal constitutional organisation, or what may be referred to as a centralised unitary state. This

was the inheritance of the South African military administration which followed German colonial rule.

7.7.1 South African rule over the territory

On 9 July 1915, German rule in South West Africa ended with the surrender of its armed forces to South African military forces. At the commencement of World War I in 1914, the South African government had been requested by Great Britain to undertake the task of defeating German forces in the territory. This was successfully accomplished by South African government troops.

On 17 December 1920, after the conclusion of the War, the territory was entrusted by the League of Nations to the government of South Africa as a 'C' mandated territory. In terms of Article 2 of the Mandate, it was ruled that the South African government,

shall have full power of administration and legislation over the territory ... [and] ... apply the laws of the Union of South Africa to the territory, subject to local modifications as circumstances may require. The Mandatory shall promote to the utmost the material and moral well-being and social progress of the inhabitants of the territory subject to the present Mandate (Mandate for German South West Africa. Article 2. 17 December 1920).

In terms of Article 6,

The mandatory shall make to the Council of the League of Nations

an annual report ... indicating the measures taken to carry out the obligations [contained in the Mandate] ... (Mandate for German South West Africa. Article 6. 17 December 1920).

These two articles were important for the political dispute over the territory, which will be referred to below. The Mandate did not, however, contain any stipulation about the measure of self-government which the inhabitants should be allowed to exercise nor the specific form of rule.

At the conclusion of the war, and in preparation for the return of civilian rule, a Commission was appointed by the South African government in 1920, chaired by N.J. de Wet, to advise on the future form of government to be instituted in the territory. The Commission recommended that the form of government existing at the time in the four Provinces of the Union of South Africa should be adopted for the territory. The population would then be given full representation in a Provincial Council and in the Union Parliament, and would be administered as a fifth Province of the Union. The Commission Report suggested that, since the white population did not number more than one-tenth of the population of the smallest Union Province, certain powers might not be delegated, until the adult male British subjects of European descent numbered at least 100 000 (Final Report of the Commission. 11th March 1921).

The Union Government did not fully act upon these recommendations. Instead an Advisory Council was constituted by Proclamation, to advise an Administrator, who became the sole authority in the territory (Du Pisani 1986:53). The Administrator was under no obligation to follow the advice of the Advisory Council and administered the territory in all matters separate from the Union, except in so far as Customs, Railways and Harbours were concerned. A highly

centralised form of administration was continued.

In December 1922, the Advisory Council passed a resolution requesting the Union Government to grant a form of self-government to the territory. This was achieved with the passing of the South West Africa Constitution Act, 1925. This Act made provision for the creation of a Legislative Assembly, an Executive Committee and an Advisory Council. The Legislative Assembly consisted of eighteen members, twelve of whom were elected, and six of whom were nominated by the Administrator. The Executive Committee consisted of five members, including the Administrator and four other persons chosen by the Legislative Assembly. The Advisory Council consisted of eight members, including the Administrator, the four members of the Executive Committee, three other persons appointed by the Administrator, and one person acquainted with the reasonable wants and wishes of the African inhabitants of the territory.

Legislative competence in matters such as African affairs, defence, railways and posts and telegraphs was permanently withheld from the Assembly and held by the South African government. Many of the administrative functions concerning the white sector of the South West African population thus remained highly centralised and localised, whereas those for the African population were decentralised.

7.7.2 'Native Administration'

For much of the period beginning with German rule, up until the Odendaal Commission Report of 1964, the approach to African rule followed the British Colonial policy of 'indirect' rule. Under German rule a 'native reserve'

policy was formulated, but before this policy had been implemented, the German authorities had ensured that the majority of the indigenous population were placed under the Schutzverträge as mentioned above. This policy of creating separate reserves for the African population was continued when the South African government took control of the territory. A form of indirect, but limited, rule was extended throughout the territory and was exercised either through councils, where there were no chiefs, or chiefs themselves.

The South African government continued to legislate and administer the African population separate from the white population. For example, in 1922 the Native Administration Proclamation no. 11/1922 (SWA) was adopted, which provided, inter alia, for the promulgation of regulations for the control and administration of 'Native reserves', as well as urban residential areas for 'Natives'. This was supplemented by other proclamations and legislative enactments in the 1920s. The ultimate control of African affairs was delegated to the Administrator of South West Africa at this time. By 1939 seventeen reserves had been established. African administration became the direct responsibility of the Administrator resident in the territory. A dualistic policy was thus applied to African and white settler administration.

No major constitutional changes took place during the period 1925 to 1949, after the implementation of the South West Africa Constitution Act, 1925. During this period, constitutional changes were frustrated by a hotly contested debate that ensued in the territory. According to Du Pisani, during the period 1924-1945, the cleavage in South West African politics was along language lines, and the issue of incorporation or non-incorporation of the territory into the Union of South Africa was the main topic of debate. Generally, parties supported by the Afrikaans and English-speaking groups were

in favour of incorporation; parties supported by the German-speaking group were against incorporation (1986:88).

Because of this cleavage in white South West African politics, the centralised nature of South West Africa's administration continued over this period of time. Important functions remained centralised in the South African government. It was only in the 1960s that a measure of decentralisation occurred, as a result of a more doctrinaire political policy being applied in the territory.

7.8 INCREASING INVOLVEMENT BY THE INTERNATIONAL COMMUNITY 1946-1965 - *THE TAKE-OFF STAGE*

7.8.1 The international dimension

The dissolution of the League of Nations and the creation of the United Nations changed the relationship between the territory and the international community. The United Nations Organisation (UNO) or United Nations (UN) came into existence on 24 October 1945, and the League of Nations was disbanded in April 1946. With the coming into being of the United Nations, the international dispute over the territory was precipitated, only ending with independence in 1990.

The outline of this dispute will be briefly explained, since the United Nations, including its principal organ, the International Court of Justice (ICJ), and a number of committees, together with the international community as a group, became important role players in determining the form of an independence constitution for the territory. The other important role players

were South West African political parties both internal and external, and the South African government.

This dispute itself generated many political and constitutional responses over time. These responses were embodied in United Nations General Assembly and Security Council Resolutions, and also in the policies of internal and external South West African/Namibian political parties, liberation movements, alliances, fronts and the South African government. Through these responses, the constitutional options for the territory began to emerge.

Since the political destiny of South West Africa became an important international issue and involved many international role players, the final internal centralised unitary constitutional order was, to a degree, determined by the international community, together with movements like the South West African Peoples Organization (SWAPO), which operated largely from outside the territory. The international community, from the late 1970s, became quite specific in its demands for a legitimate unitary constitutional order in an independent state. An exposition of the background to, and actual involvement in the territory on the part of the United Nations is therefore necessary.

At the time of the dissolution of the League of Nations in 1946, no special provision was made for its successor, the United Nations, to assume responsibility for territories which were under mandatory supervision. On the establishment of the United Nations in 1945,

it was apparently accepted that all states which administered mandated territories would place their mandates under the new International Trusteeship system of the UN the procedure

was, in fact, followed by all countries, except South Africa

South Africa, in contrast, renewed her efforts to have South West Africa incorporated in the Union (Tötemeyer 1977:18).

As a response to the uncertainty surrounding the future of South West Africa, the General Assembly of the United Nations decided, in 1949, to request an Advisory Opinion from the ICJ on the legal status of the territory. Amongst others, two important questions were submitted to the ICJ:

- 1) Does the Union of South Africa continue to have international obligations under the mandate for South West Africa, and, if so, what are these obligations? and,
- 2) Has the Union the competence to modify the international status of the territory of South West Africa, or in the event of a negative reply, where does competence rest to determine and modify the international status of the territory? (Du Pisani 1986:130).

With regard to question (1), the Court stated that the creation of the United Nations in 1945 did, inter alia, not result in sovereignty over the territory being transferred to the Union of South Africa, but the Union was still obliged to provide for the well-being and development of the inhabitants; further, the Court stated that the Mandate did not lapse when the League of Nations ceased to exist in 1946. The Union of South Africa was still obliged, in terms of the Mandate, to submit an annual report (referred to above) on its administration of the territory to the United Nations, which it had ceased to do in 1949.

With regard to question (2), the Court stated that the Union of South Africa had no unilateral competence to modify the international status of South West Africa. Such determining and modifying competence resided with the Mandatory power, acting with the consent of the United Nations. It required the Mandatory power to place the territory under the Trusteeship system of the United Nations in terms of Article 77 of the Charter. However, the Union of South Africa, in terms of this opinion, was not legally obliged to place South West Africa under the Trusteeship Council of the United Nations.

This pronouncement of the ICJ was merely an Advisory Opinion. It was accepted by the General Assembly of the United Nations in Resolution 449 A(V) of 1950, after which an *ad hoc* committee was set up, to negotiate with the South African Government on the implementation of this Opinion (Du Pisani 1986:130-131). This Opinion had major implications for South Africa, the territory, and its relationship with the world body, in that its status now became truly an international concern, continuing right up to independence in 1990.

In 1960 a further series of resolutions was passed by the General Assembly at the initiative of the Trusteeship Committee. The Assembly resolved, amongst other issues, that the application of apartheid in South West Africa was to be deprecated, that the African population should be able to exercise free political rights, and that the United Nations Committee on South West Africa be invited to investigate the situation in the territory, and propose steps leading to self-government for the indigenous inhabitants (*Survey of Race Relations in South Africa* 1961:289).

In December 1962, the ICJ handed down a judgement on an application filed by Ethiopia and Liberia. The Court found that South Africa was accountable to the

United Nations for her administration of the territory and, moreover, that the implementation of the apartheid policy violated Article 2 of the Mandate, which required that the mandatory power, 'promote to the utmost the material and moral well-being and social progress of the inhabitants of the territory ...' (Mandate for German South West Africa, 1967).

In July 1966, the ICJ handed down a further judgment in which it declined to pronounce upon the two issues dealt with in the 1962 judgment, but declared that the two applicants, Ethiopia and Liberia had no legal standing. The result of this judgment, according to Du Pisani (1986:141), was to strengthen the South African government's resolve to implement its policies of geopolitical partition or apartheid in the territory.

The international dimension to the political evolution of the territory fuelled counter reactions from the South African government. At the time of the latter two ICJ pronouncements, the South African government increased its endeavours to implement its own political solutions in the territory. This latter judgment marked a turning point in the conflict over the destiny of the territory, which will be discussed below.

7.8.2 Incorporation of the territory into the Union

It had been the policy of successive South African governments, from about the second decade of the twentieth century, to incorporate neighbouring territories into the Union. An offer was made by General Jan Smuts, South African Prime Minister at the time, to incorporate Southern Rhodesia into the Union in 1923 (see chapter 6 above), and General J.B.M. Hertzog, his successor, also made offers to incorporate the former High Commission

Territories into the Union (see chapter 5 above). From 1934 onwards the White Legislative Assembly for South West Africa also adopted resolutions, requesting that the territory be incorporated into the Union of South Africa.

General Smuts' attempts, in the 1940s, at having South West Africa incorporated into the Union were a continuation of this policy. The National Party, which assumed power in South Africa in 1948, also favoured incorporation.

In support of Smuts' desire to have the territory incorporated into the Union, a so-called referendum was held in 1947. The entire black and brown population was asked whether South West Africa should be incorporated into the Union or, alternatively, whether Trusteeship should continue under the supervision of the United Nations. An International Trusteeship system was established under Chapter XII of the United Nations Charter.

According to Tötemeyer, this was not a referendum in the true sense of the word, since the ethnic groups were consulted as a whole, and not as individual people. Petitions emphasising the desire for incorporation were signed by captains, chiefs and councillors on behalf of their members, without proper consultation. The 'referendum result' showed that a majority of the South West African population was in favour of incorporation into South Africa (1977:18). The effect of this 'referendum' was several-fold. Amongst the new black elite, especially among the new black leadership groups, an awareness of alternatives was created, which eventually contributed towards the growth of an African nationalist sentiment in the territory.

The formation and evolution of the United Nations also aroused expectations

among the rising modernising elite of the territory, a sentiment which resulted in more black people fleeing to foreign countries, and associating with the United Nations Organization. Individuals who associated themselves with the United Nations acted as the champions of the black and brown people of South West Africa (Tötemeyer 1977:19). These groups now had a say in the policy-making process at the United Nations, where previously only whites had an input, both within the territory and in the international organisations.

In 1948 the National Party came to power in South Africa, and government policy with regard to South West Africa began to change. The way was paved for further constitutional developments, and the implementation of the separate development policy in the territory. According to Du Pisani, the National Party programme, including such aspects as republicanism, racial separation, white self-preservation and white supremacy, was extended to the territory (1986:121). The allocation of values, goods, status, power and services took place almost exclusively along ethnic lines, as a result of National Party policy being increasingly implemented in the territory (Du Pisani 1986:124).

Radical changes were introduced in a legal sense by the passing of the South West Africa Affairs Amendment Act no. 23 of 1949, amended by Act no. 55 of 1951, which gave the South African Parliament full responsibility for 'Native' affairs. Control over 'Native' affairs had previously been delegated to the Administrator of the territory. The administration and responsibility of the indigenous peoples of South West Africa was transferred to the Minister of Native Affairs of the Union of South Africa under the South West Africa Native Affairs Administration Act no. 56 of 1954. The former Act also provided for the election, with full membership rights, on behalf of South West Africa, of six white members to the House of Assembly and two white members to the Senate

of the Parliament of the Union of South Africa. Together with the above legislation, the Native Affairs Act no. 55 of 1959, and 'full and final legislative function of the administration and development of "Natives" in South West Africa was vested in the Government of South Africa' (Tötemeyer 1992:8).

What is important about the closer legal and administrative integration of the territory into South Africa is that it further laid the basis for centralised administration and an eventual unitary state. The dominance of centripetal forces resulting in greater legal and administrative centralisation is unlikely to be accompanied by centrifugal forces resulting in decentralised administrative structures. Thus this process was an important early contributory factor in establishing a centralised unitary form of government in the territory.

By the late 1950s, the South African government's policy of Apartheid was being applied vigorously in South Africa itself. To give substance to this policy in the territory, a Commission of Inquiry was appointed by the South African government, in September 1962, to find ways of 'further promoting' the welfare of the inhabitants of South West Africa. It became known as the Odendaal Commission.

The Commission argued that:

It is the considered conviction of the Commission that the continued existence of a home area for each individual population group as the inalienable area of that indigenous group would be in the best interests of the various population groups, and that,

in accordance with their declared wish, these homelands should continue to exist as such and become increasingly independent (Report of the Commission, Chapter VII, para.293).

The Odendaal Commission reported in 1964 and, following its recommendations, so-called homelands or Bantustans were established in Namibia for the Owambos, Hereros, Damaras, Tswanas, Namas, Basters, Kavangos, Caprivians, Kaokolanders, and the San people. As a result of the 1966 judgment, a number of Legislative Councils and Community Authorities were established for the different ethnic groups, and their implementation was continued until 1977.

In a Memorandum produced in 1968 by the South African Government, detailing future financial and administrative relations between the Republic and South West Africa, it was stated that a further twelve administrative functions would be taken over by the Republic, previously administered by the South West Africa Administration (Memorandum. Decisions by the Government on the Financial and Administrative Relations Between the Republic and South West Africa).

Further functions were also transferred to the Minister of Bantu Administration and Development from the South West Africa Administration, in a number of the homelands referred to above. The Memorandum re-emphasised that the territory formed an integral part of South Africa, and that the South African government might apply its laws to the territory.

In order to give content to the policy of ethnic fragmentation as provided for in the Odendaal Commission Report, and administrative centralisation as referred to in the Memorandum, the Native Nations in South West Africa Act,

no. 54 of 1968 was adopted by the South African Parliament. In an accompanying memorandum, it was stated that,

... the objective of self-determination for the various population groups will ... not be promoted by the establishment of a single multi-racial central authority in which the whole population could potentially be represented, but in which some groups would in fact dominate others (Du Pisani 1986:185).

This led to a kind of dualistic policy of legal control and administration. Final legislative control vested in the government of South Africa. A degree of administrative control was vested in the homeland administrations, but white administrative control remained centralised. Up until the early 1970s, the South African government did not accept a central authority for all groups in the territory.

7.9 BUILD-UP TO THE 1990 INDEPENDENCE CONSTITUTION 1967-1990 - *THE TERMINATION STAGE*

As referred to above, there were a number of role players both internal and external to the territory who participated in formulating Namibia's independence constitution. All these interacted in a very complex process during the period in question, the eventual result of which was a convergence of thinking across a broad spectrum of opinion in favour of a centralised unitary state. Limited concessions were made to regional administration. It was the international community who prescribed the minimum requirements for resolving the international dispute over the territory and having it recognised internationally as an independent state. Much of the detail was

negotiated by the different role players involved.

7.9.1 Renewed attempts by the United Nations and the international community to resolve the dispute

Periodically, beginning with the formation of the United Nations in 1946, either the General Assembly or Security Council or the ICJ pronounced upon South Africa's administration of the territory. From the latter part of the 1970s, the international community, that is states which were members of the United Nations, but acting outside the United Nations, also became involved in attempting to resolve the dispute and establish an internationally recognised independence for the territory.

7.9.2 The United Nations

Numerous resolutions and reports were passed and accepted by United Nations organs from the late 1940s onwards, concerning the South West African question. Through these resolutions and reports the international community also became involved, as a result of overlapping membership, in determining the nature of the Namibian independence constitution, either through the insistence upon specific detail or through the presumptions contained in these resolutions and reports. Independence and the constitutional form for an independent territory thus became an international issue. Only some of the more important United Nations resolutions taking definitive stands on issues or illustrating key principles will be referred to below.

In October 1966, the General Assembly of the United Nations adopted Resolution 2145(XXI) terminating the Mandate for South West Africa. An *ad hoc* committee

was established to implement the Resolution, which gave rise to the later establishment of the United Nations Council for Namibia in 1967 (referred to below) to administer the territory until independence. It also cleared the way for Security Council involvement in the dispute over the territory. In 1969, the Security Council approved the General Assembly's termination of South Africa's right to administer the territory.

In 1971 the World Court handed down an Advisory Opinion, which was adopted by the Security Council, declaring that South Africa's presence in the territory was illegal. According to Du Pisani, this Advisory Opinion gave renewed impetus to the accelerated implementation of ethnic fragmentation and the recommendations of the Odendaal Commission. This Opinion was approved by important internal black supported movements, which viewed South Africa's administrative control of the territory as illegal and oppressive. The Advisory Opinion led to increased international pressure to resolve the question of the status of the territory (1986:196). The personal intervention of the Secretary General of the United Nations in the dispute, and his later appointment of personal representatives to visit the territory, also resulted from this opinion.

7.9.3 United Nations Representatives

In February 1972, the United Nations Security Council passed Resolution 309, authorising the Secretary General of the United Nations, Dr Kurt Waldheim, to enter into negotiations with all parties concerned as to the political future of Namibia. Dr Waldheim visited the territory and reported to the United Nations Security Council during its session on the situation from 28 November to 6 December 1972.

According to Dr Waldheim's Report, he had indicated to the South African Minister of Foreign Affairs, while on a visit to the territory, that any useful discussions on the future of Namibia would have to be based on self-determination and independence for the people and the territory as a whole. The South African government's policy of self-determination and independence for the peoples of Namibia, he said, needed to be reconciled with the United Nation's understanding of these concepts. Dr Waldheim's visit initiated the first real discussion on whether a unitary, federal or a geo-ethnic or homelands constitutional solution was appropriate for the territory.

Dr Waldheim had solicited the views of a number of organisations and individuals during his visit. Referring to non-white groupings, he indicated that they supported the establishment of a unitary and popularly elected government in the territory. These views were essentially similar to those of SWAPO at the time, and were opposed to the creation of separate ethnic homelands.

Those opposing the unitary state justified their views by stating that African tribal groups formed essentially different ethnic, cultural and linguistic groupings which had always lived separately, and that they should be allowed to retain their separate identity. Semi-autonomous entities could unify under a federal system of government.

Members of the White Executive Committee of South West Africa emphasised the lack of unity and the differences between African ethnic groups, and felt that in a unitary state these divisions would lead to conflict as the Owambos (an ethnic group which resided largely in the north of the territory and comprised about fifty percent of the population) outnumbered all other non-white groups.

The same, they feared, would happen under a federal system of government (United Nations Security Council. S/10738, 17 July 1972).

Following this visit, Dr Waldheim appointed Dr Alfred Escher as his personal representative to realise the goals of self-determination and independence for Namibia. In his Report to Waldheim, Escher stated

the majority of the non-white population of Namibia supported the establishment of a united, independent Namibia On the other hand, certain sections of the non-whites and the majority of the white population supported the homelands policy and supported continued rule by South Africa (United Nations Security Council, S/10832. 15 November 1972).

In the conclusion to his report, Escher referred to the interpretation of the South African government's policy of self-determination and independence with regard to Namibia. The South African government's view was that more administrative and political experience should be gained through a policy of self-determination, before independence could be considered. However, the South African government did, according to Dr Escher, 'agree to certain measures involving the "territory as a whole"' (United Nations Security Council, S/10832. 15 November 1972), which Dr Escher felt would be in line with the United Nations aim of retaining the unity of Namibia. This was the South African government's first tentative concession towards an eventual unitary constitution for the territory. It was suggested that if this concession was not made, the talks would come to a halt. Gradually, over the years, the eventual unitary form of government took shape and became more

entrenched in United Nations resolutions.

The Escher report was followed by Resolution 323 (1972), which affirmed that the principle of national unity and territorial integrity could not be subject to any conditions, and noted that the overwhelming majority of the opinions consulted by the Representative of the Secretary-General were in favour of the immediate abolition of the homelands system of government.

In a further memorandum from the White Executive Committee of South West Africa, directed to the Special Representative of the Secretary-General of the United Nations in October 1972, a case was made against a unitary state for the territory. It was argued that freedom in a unitary state could only lead to domination of one or more groups by another. As an alternative, it advocated an ethnic homelands policy. It was argued that the homelands policy was a perpetuation of traditional arrangements (Unisa Archives. Niehaus Collection. Memorandum, 25 October 1972).

In a memorandum compiled by Chief Munjuku II of the Mbanderu tribe, a case was made out against the creation of homelands in the territory. He stated that:

Bantustans are an isolation [sic] to the entire territory of S.W.A. and also to the Western Civilisation [sic] as the homelands have no source of income to the indigenous population There are no minerals, industries, sufficient transport facilities The Five Year Development Plan of the Govt [sic], has failed in all spheres (Unisa Archives. Niehaus Collection. 73.3. Memorandum 18 October 1972).

Despite the South African government's assurances, in 1973 it passed the Development of Self-Government for Native Nations in South West Africa Amendment Act, which made further provision for the development of the homelands policy. SWAPO and SWANU rejected the Amendment Act on the grounds that South Africa's presence in the territory was illegal and that it was devised to divide and rule the indigenous population.

7.10 INTERNAL DEVELOPMENTS

7.10.1 Advisory Council

In 1973, a Prime Minister's Advisory Council for South West Africa was constituted as a new diplomatic and political initiative by the South African government to resolve the Namibian dispute. It arose out of assurances given to Dr Escher during his earlier visit to the territory. The Advisory Council was constituted on an ethnic basis but excluded political movements like SWAPO and SWANU. It was the predecessor to the Turnhalle Conference, which was constituted in Windhoek in 1975. The constitution of the Advisory Council was the first organised attempt by the South African government at drafting a constitution for the territory, together with members of different ethnic groups.

7.10.2 The Turnhalle Conference

During the early 1970s, pressures were brought to bear on the South African government by Western powers, and in the form of an armed struggle waged by SWAPO, to settle the South West African dispute. The South African

government's response to these pressures was to establish initially an Advisory Council, and then to organise what became known as the Turnhalle Conference in the capital, Windhoek. The delegations to this Conference comprised 156 white, black and brown people, chosen on an ethnic basis, and consisting mainly of traditional leaders. SWAPO was not present at the proceedings.

The Conference adopted a Declaration of Intent which said nothing about the final form of government desired for the territory, neither unitary, federal nor confederal constitutional options were excluded in the Declaration of Intent.

The Turnhalle Constitutional Conference delegations deliberated for just over eighteen months, from 1 September 1975 to 18 March 1977, and adopted by consensus a plan for an Interim Government and a three-tier constitutional system providing for eleven ethnic administrations at the second tier, which would establish the framework for an independence constitution. Independence was scheduled for 31 December 1978. The Turnhalle draft constitution was, however, never implemented for fear of economic sanctions being imposed by the international community.

The Turnhalle Conference initiated a great many reactions, both from internal and externally based political parties and movements during and after the Conference, and also from the international community. A number of new resolutions and initiatives were consequently taken by the international community. In the United Nations Special Committee on Decolonization, for example, the Turnhalle was perceived as comprising delegates who were carefully hand-picked to carry out the South African government's wishes

(Annual Review of United Nations Affairs, 1977. I).

A number of statements were issued by parties, which did or did not participate in the Turnhalle Conference, setting out their constitutional visions for the territory. In a statement issued on 18 August 1976, the Turnhalle Conference referred to the 'interdependence of the different population groups and a firm desire to maintain SWA as a unity' (Africa Contemporary Record. 1976-77). This was evidence of a very slight shift in thinking towards the acceptance of a single authority for the territory.

A further indication of a growing belief in a strong central authority for the territory came from the Damara delegation to the Turnhalle Conference. It spelled out its objections to a federal constitutional form by stating that the territory required a strong centralised form of government, because the population relative to the geographic extent of the territory was small, and manpower should be utilised to its best advantage. In all federations, there is a tendency towards greater centralisation to facilitate planning. However, the delegation stated that certain federal characteristics could be utilised in a future constitution for South West Africa (Unisa Archives. Niehaus Collection. Document undated).

In response to the Interim Constitution drafted by the Turnhalle Conference, Mr Brian O'Linn, leader of the Federal Party which later became a constituent part of the Namibia National Front, described the eleven ethnic administrations as provided for at the second tier as

an overdose and overemphasis on ethnicity It is nevertheless
... totally unacceptable and impracticable In the present

circumstances and climate, a federation can only be a solution if the second tier of government has a clear geographic content ... that is jurisdiction or authority within a specific identifiable area. Such a form of federation matched with a strong central government is still the ideal solution for SWA (Official opening address to the first Federal Party Congress by Adv. B. O'Linn).

In December 1978 an election was held, in terms of this constitution, for a Constituent Assembly. This election was ethnically based and political movements like SWAPO and the NNF did not participate. In terms of Security Council Resolution 439(1978), dated 13 November 1978, the South African government was urged to cancel this election. This Constituent Assembly became a National Assembly and was recognised by the South African government as being the authority entitled to make laws for the territory. From 11 to 13 November 1980, ethnic elections were held for second-tier authorities in the territory. According to Du Pisani (1986:449), these two elections were designed to enhance the position of the internal political parties. The spin-off of this process was that it drew the lines between the internal parties, SWAPO and the international community, and encouraged further rounds of diplomatic activity intent upon resolving the dispute and devising a constitutional solution acceptable to the international community.

7.11 FURTHER INITIATIVES BY THE INTERNATIONAL COMMUNITY

The Turnhalle Conference was not regarded as a legitimate constitutional exercise by the international community. Consequently, it led again to a great deal of international diplomatic activity. A preferred unitary constitutional order was embodied in a number of resolutions by the United Nations denouncing

internal ethnic constitutional solutions. Only some of the resolutions passed are referred to below.

First, United Nations Security Council Resolution 385 of 1976 was passed, which expressed grave concern about South Africa's efforts to destroy the national unity and territorial integrity of Namibia and demanded that it put an end to its policy of fragmenting the territory. The Resolution declared that free elections should be held for the whole of Namibia as one political entity under United Nations supervision and control. The Resolution further demanded that all politically repressive laws and practices be abolished, and particularly bantustans and homelands (United Nations Security Council, S/RES/385). This resolution formed one of the later foundations upon which the Independence Constitution was constructed.

Secondly, Security Council Resolution 435 was passed on 29 September 1978. Recalling Resolution 385 and reaffirming the United Nations responsibility over Namibia, it provided for the establishment of a United Nations Transition Assistance Group (UNTAG) to ensure the early independence of Namibia through free and fair elections under the supervision and control of the United Nations (United Nations Security Council Resolution 435). Resolution 435 formed another section of the foundation upon which the Independence Constitution was constructed.

Another resolution adopted by the General Assembly in 1978, prescribing a future constitutional order for the territory, affirmed that the Namibian people should be able to attain self-determination, freedom and genuine independence within a 'united' Namibia (United Nations General Assembly, A/Res/S-9/2. 4 May 1978). Yet another adopted at the 37th Session of the

General Assembly held in 1982, denounced 'all fraudulent constitutional and political schemes of South Africa' (*Annual Review of United Nations Affairs*, 1982).

In 1982, the President of the General Assembly stated that the achievement of self-determination, freedom and independence in a united Namibia, together with the liquidation of colonialism and racism, was a matter of great urgency for the organisation (*Annual Review of United Nations Affairs*, 1982). During the same General Assembly session, representatives from Angola, Botswana, Mozambique, Tanzania, Zambia, the United States and other countries, stated that Resolution 435 was the only basis for the independence of Namibia (*Annual Review of United Nations Affairs*, 1982).

7.11.1 The Western Contact Group

By 1976 it was becoming clear that the Turnhalle constitutional conference was not regarded as a legitimate political exercise, and the Five Western powers, which included the United States, France, Great Britain, Canada and West Germany, increased their diplomatic efforts to reach an internationally acceptable solution to the Namibian issue. The South African government objected to Resolution 385 adopted in January 1976, which called for free elections under the supervision and control of the United Nations, and in 1977 proceeded with a referendum amongst the white population to determine the acceptability of an Interim Turnhalle Constitution. This Constitution was overwhelmingly endorsed by the white population group in the referendum. In 1977 the Western contact, consisting of the United States of America, Canada, France, Great Britain and West Germany, launched a diplomatic initiative. After intensive negotiations between South Africa, the so-called 'Frontline

States' of Zambia, Angola and Botswana, SWAPO - as an external political movement - and internal political movements, a proposal was submitted to the United Nations Security Council which was embodied in Resolution 435, as referred to above.

The Western Contact Group submitted a settlement proposal to the Security Council on 10 April 1978. The Western powers based their co-ordinated diplomatic initiatives on a number of fundamental points of departure, one of them being that South African policies of ethnic fragmentation and the violation of the national unity and territorial integrity of Namibia should not be continued. In further negotiations with the South African government and a Turnhalle delegation, one of the points agreed upon was the holding of free national elections under United Nations auspices. Yet further negotiations resulted in the agreement to conduct these elections for representatives to a constituent assembly to draft a new constitution for an independent state, on a non-ethnic basis (Du Pisani 1986:339-340). Implicit in this was the acceptance of Namibia as one political entity.

Resolution 435, passed by the Security Council on 29 September 1978, met with a number of objections. One was that it lent too much support and recognition to South Africa's administration of the territory, another that it gave no indication of the kind of constitution to be drafted and adopted by the Constituent Assembly. These objections were addressed by an initiative taken by the United States of America and the Western Contact Group with SWAPO and the internal political parties, on the principles concerning the Constituent Assembly and the constitution for an independent Namibia. A set of principles, which became known as the '1982 Constitutional Principles', emerged from these negotiations and were circulated as a document of the Council.

This resolution was preceded in 1977 by a number of ethnic elections, for example, a Volksraad for Rehoboth, and a Damara Representative Authority. In December 1978, the South African government held elections for a Constituent Assembly without SWAPO's involvement. As Du Pisani argues, the holding of internal elections was part of a process of what he terms, 'The Politics of Internal Consolidation and Controlled Change' (1986:426). The holding of internal elections was intended to strengthen the internal parties in the negotiating process and consolidate fragmented opinion within the territory.

On 19 March 1979, the Minister of Foreign Affairs of South Africa, in a letter addressed to the President of the Security Council, indicated that the South African government had agreed that the territory would achieve independence on the basis of one man one vote and that colour discrimination would be removed (Unisa Archives. Niehaus Collection. 73.7 Letter, 19 March 1979).

After the adoption of Resolution 435, the South African government raised a number of objections to the plan, in particular the alleged bias of the United Nations towards SWAPO. By 1982 the removal of Cuban troops from neighbouring Angola had, on the part of the South African government, become a further cornerstone of its resistance to the implementation of Resolution 435.

In a statement made by Mr Brian Urquhart, United Nations Under-Secretary-General for Special Political Affairs, at a pre-implementation meeting in January 1981, the need for a settlement proposal to be acceptable to the Namibian people and thus to the international community was emphasised. The key to international acceptance and the transition to independence was, he claimed, the holding of free elections under United Nations supervision and control for the whole of Namibia as one political entity (Unisa Archives.

Niehaus Collection 73.8. Statement, 8 January 1981).

Negotiations continued with the Contact Group. A Confidential Memorandum, dated February 1981, contained proposals by the five Foreign Ministers of the Contact Group for a constituent assembly and constitution for an independent Namibia. The Memorandum stated that the key to an internationally acceptable transition to independence was free elections for the whole of Namibia as one political entity under United Nations supervision and control. The Memorandum stated, moreover, that Namibia should be a unitary, sovereign and democratic state, and provision should be made for elected councils for local and regional administration. This is the first mention by an international body of the idea of a unitary state for Namibia. Provision was also made for a declaration of fundamental rights (Unisa Archives. Niehaus Collection 73.5 Confidential Memorandum, 31 January 1978).

These provisions were incorporated in the 1982 Constitutional Principles, which were formally adopted in 1989 by the Namibian Constituent Assembly.

7.11.2 The United Nations Council for Namibia

On 27 October 1966, the General Assembly of the United Nations adopted Resolution 2145(XXI) terminating the mandate for South West Africa. The termination of the mandate had both legal and political implications and led to the formation, in terms of United Nations General Assembly Resolution 2248 (S-V), of an eleven-member United Nations Council for South West Africa to administer the territory until independence. This Council, later referred to as the United Nations Council for Namibia, pronounced upon a desired form of independence for the territory.

Although not explicit, the Council, over the years and in various statements, reinforced the idea of, and placed a presumption on, the eventual adoption of a centralised unitary state for the territory. In a statement read, for example, by Kurt Waldheim to a meeting of the Council in 1977, the provisions of Security Council Resolution 385 were reaffirmed, calling for elections for 'Namibia as a whole, under United Nations supervision and control, so that the people can freely determine their future' (*Annual Review of United Nations Affairs* 1977.I).

In January 1984, the United Nations Council for Namibia reaffirmed, 'the Namibians' inalienable right to self-determination and independence in a united Namibia ...' (*Annual Review of United Nations Affairs*, 1982).

7.11.3 United Nations Special Committee on Decolonization

In a meeting of the Special Committee of 24 on Decolonisation, the Chairman, Mr Salim A. Salim, referred to South Africa's continued pursuit of the policy of apartheid and balkanisation, and its futile attempts at ensuring the fragmentation of the Namibian people, and the destruction of the national unity and integrity of Namibia (*Annual Review of United Nations Affairs*, 1977. I).

The Special Committee of 24 on Decolonization, took a consensus decision condemning South Africa for employing tactics to destroy the national unity and territorial integrity of the territory. This decision took into account the South African government's view that Walvis Bay (an ocean port on the Atlantic coast) was legally an integral part of South African territory. The Special Committee also viewed SWAPO as the sole and authentic representative

of the Namibian people, and maintained that free elections and any negotiations must include the participation of SWAPO (*Annual Review of United Nations Affairs*, 1978).

7.11.4 The 1982 Constitutional Principles

The Principles, as negotiated by the Five Western powers, were transmitted to the Secretary-General of the United Nations. Section B (1) and (8) of the document, which sets out the 'Principles for a Constitution for an Independent Namibia', states that 'Namibia will be a unitary, sovereign and democratic state Provision will be made for the establishment of elected councils for local or regional administration, or both' (Letter to the Security Council S/15287. 12 July 1982).

When the Constituent Assembly was formed in 1989, these Principles were formally adopted as a framework for the drafting of the new Namibian constitution. According to Wiechers, they strongly influenced the various political parties of the territory in their drafting and presentation of the respective principles to the Constituent Assembly (Van Wyk et al. 1991:9).

7.11.5 United Nations Institute for Namibia

In terms of United Nations Resolutions, a United Nations Institute for Namibia was established in Lusaka, Zambia, in 1974, to train Namibians to take up positions after independence, and to give consideration to the constitutional future of the territory.

It was asserted, particularly by the internal Namibian political parties, that

this Institute was an instrument of SWAPO. Although not officially so, it was dominated by SWAPO personnel, and its pronouncements will be taken as fairly reflective of SWAPO's constitutional thinking.

In a document published in 1979 by the Institute for Namibia, Mr H.G. Geingob, Director of the Institute, future Chairman of the Constitutional Committee of the Constituent Assembly, and future Prime Minister of Namibia, explained that the final choice must be made from the various constitutional options by Namibians themselves. He, however, qualified this by saying that

Namibia would need a strong central government due to the centrifugal situation created by the South African regime. Consequently, a federal system of government has been ruled out as a viable option (Constitutional Options for Namibia. 1979:111).

The Document further weighed up the strengths and weaknesses of federal and unitary alternatives for an independent Namibia. It emphasised the high administrative costs of a federal system and the implications for small states with limited resources, and the possibility of conflict between the centre and the constituent states. A federal system with a weak central government could be used as a breeding ground for dissension and disunity in the country.

The Document maintained that a unitary system would be attractive to the founding fathers of an independent Namibia, in that the nationalism of the pre-independent territory would give way to national patriotism, and an independent Namibia would need to guard against the fragmentation of this national patriotism at the sub-national level. Further, the Document stated

that a federal system of government in Namibia with its population of 1,25 million would be unrealistic: for federalism to work, at least four units with a population of about one half million was essential.

If a federal unit comprised the 'Ovambo tribe', which was the dominant group in the territory, this would lead to conflict. Under a federal system, a further dispute could revolve around the distribution of wealth between the centre and the constituent states. A federal system, the document concluded, would be a regressive step, in that it would accentuate ethnic differences built up during the administration of the South African government. A unitary system of government could, nevertheless, provide for decentralisation for administrative convenience.

This formed the basis of SWAPO's thinking in the Constituent Assembly.

7.12 NAMIBIA/SOUTH WEST AFRICA POLITICAL PARTIES AND MOVEMENTS

7.12.1 African nationalism

The incorporation issue in the 1940s and 1950s, the new militancy in the United Nations in the 1950s and 1960s, the application of Apartheid policy in the territory and the growth of nationalist sentiment in Africa in general, led to the establishment of political movements and parties both inside and outside the geographic bounds of South West Africa. These movements in turn impacted upon the negotiating and independence processes in the territory to greater and lesser degrees over a period of time. It was, however, only in the late 1950s that black supported political movements emerged in the territory, the most notable being SWAPO and SWANU.

Over the years, the cultural-pluralistic pattern of South West Africa has given rise to a great number of political movements and parties. Some have become fairly large, some have remained small, and others have disbanded or joined fronts, alliances or umbrella organisations. Most black supported parties can, however, trace their roots to SWAPO and SWANU. The inputs of political movements to the negotiations over the future constitution for the territory varied. Some were so small as to have had very little impact on the process, whereas others, with larger support bases or better funding, had a greater impact. Consequently, only certain of the policies of the larger political parties and movements, which more particularly won representation in the Constituent Assembly, or were the forebears of parties to win representation, will be discussed.

As mentioned above, numerous political parties and movements were formed, which were disbanded, or joined in fronts or alliances at various stages in Namibia's constitutional evolution. To greater or lesser degrees, Namibian political parties and movements communicated their thinking on constitutional issues to negotiating teams. There is no reliable way of establishing the true strengths of these parties or movements, as no all-inclusive election was held until 1989. However, they played a very important role in the constitutional evolution of the territory over a long period of time. White supported movements, like the National Party of South West Africa, played a role from early in the twentieth century, whereas black supported political movements have only been active since the late 1950s. Political movements supported by both black and white population groups, like the Democratic Turnhalle Alliance (DTA), have engaged in the politics of the territory since the mid-1970s.

Some of the political parties and movements have been quite specific as to

their constitutional preferences for the territory whereas others have not. The debates within and between the main parties and political movements will be discussed below, as they are illustrative of trends of thought which impacted to greater or lesser degrees on the constitution-making process, and the final constitution drafted for the territory.

7.12.2 South West African People's Organisation (SWAPO)

SWAPO has probably been the most widely supported black political movement in the territory since its formation. Formed as The Ovambo [sic] People's Congress in 1958, it became the South West African People's Organisation (SWAPO) in June 1960. This organisation occupied the greatest number of seats in the Constituent Assembly which drafted Namibia's independence constitution. It received most of its support from the Owambo ethnic group.

Very little detailed material exists on SWAPO's early constitutional thinking. In 1959, for example, members of the organisation made an appeal for universal suffrage in South West Africa, irrespective of colour, creed, religion and national origin (Du Pisani 1986:148). One early example of SWAPO's thinking was contained in a statement issued by the organisation on 8 September 1970, to the Third Non-Aligned Conference held in Lusaka which stated:

South Africa is now embarked on another criminal road. She has begun to fragment our people into non-viable bantustans in total disregard of the people's wishes and popular aspiration for complete national independence and sovereignty (William Cullen Library. A1911).

In an interview published in 1973, in response to the South African government's policy of ethnic fragmentation in the territory, Andreas Shipanga, Director of Swapo's Information Service, and later a member of SWAPO-D (formed in 1978), said;

we Namibians are one black nation. Why should we allow ourselves to be divided when this division simply makes it easier for the whites to rule over us. If all our people come together, we can destroy European privilege and take the destiny of our nation into our own hands (Shipanga 1973:23).

Shipanga continued his statement by saying that the 'Bantustan policy is designed to reinforce the division of our people, and SWAPO has always opposed this racist tactic' (Shipanga 1973:23).

In an extract from SWAPO's Constitution, released in 1976, the organisation expressed itself in favour of the creation of a cohesive, representative political entity, and against tribalism, racism, and regionalism, thus suggesting a centralist tendency in its thinking (*Namibia News* vol. 9. no. 9. July 28 - August/September/1976).

In April 1977, SWAPO received the support of the Association for the preservation of the Tjamuaha/Maharero Royal House, in opposing the South African Government's policy of divide and rule and balkanisation, and supported the liberation of Namibia as a unitary state (Resolution dated 4 April 1977).

In a discussion paper, published in 1978 and entitled, 'The Constitution of

Independent Namibia', SWAPO set out some of its thinking on the unitary state. The document emphasised that the people would draw up the final Namibian constitution. In the preamble, it was claimed that Namibia's supposed 'ethnic problems' had been blown up by the South African government for its own purposes (Discussion Paper, Para. 5). It was suggested that a constitution based on ethnic criteria was not appropriate for an independent Namibia. In Paragraph 22, it was stated by SWAPO that it was in favour of a national system of local government, but was totally opposed to any 'national regionalism', which was based exclusively on tribal affiliations (Discussion Paper, Para.22).

With regard to the appropriateness of a constitution for a future independent Namibia, the discussion paper made several points. It stated that, 'A Constitution must relate to the real situation in the country, as well as to what the people wish the situation to become...' (Para.41). In referring to Namibian realities, it said that Namibia was a large country and distances between the centres of population were great. There was a danger that some parts of the country might be isolated as a result of long lines of communication. The discussion paper referred to South Africa as the colonial power,

which [had] sought to inflict the vicious evil of apartheid and bantustanisation upon the Namibian people over many years. For its own purposes, it [had] tried to divide the people and perpetuate traditional and anachronistic tribalism (Discussion Paper, Para.41(ii)).

In explaining the essential principles of SWAPO's constitution, the document

said the following:

SWAPO has, over many years, repeated its essential conception of Namibia as an independent, unitary state Our experience of persecution and racialism over many years has deepened our unqualified commitment to democratic rule, the eradication of racialism Moreover, we reject absolutely any notion of bantustans masquerading as federalism. SWAPO is pledged to the idea of a unitary state. Of course, that does not mean that every government decision, however local its effects, must be taken centrally. As in all systems of government, some issues will be decided centrally, some locally, by devolution [sic] of power from the centre. But devolution must come from the centre; not transfer from South African-inspired 'homelands' (Discussion Paper, Para. 42).

The Discussion paper returned to the issue of central and local government relations and referred to the difficulty of dividing functions between central and local government. It referred to the need for efficient administration and the need for people to be involved in decision-making, and suggested that one answer might be that of regionalisation and democratisation of those structures to guard against overcentralisation and totalitarian rule. The Document contrasted its own understanding of central and local government relations with that of the South African government.

According to the Discussion paper:

The South Africans in their own interests, have tried to exploit

tribal differences in Namibia as part of a divide and rule policy. They have tried to stress and to exaggerate the differences between so-called ethnic groups, arguing that Namibia can never be one because of its racial variety. Thus they assert, only a 'federal' or 'confederal' solution will work. In fact, the kinds of federal or confederal notions which they advance have nothing to do with the terms as accepted throughout the world, as they are understood, for instance, in the US, Russia, Germany or Switzerland. They are simply another way of advancing tribalist racist bantustans, enabling the privileged few to go on running the country SWAPO is thus resolutely opposed to a system of devolution of government to local authorities with tribalist foundations (Discussion Paper, Para.83).

The Discussion paper expressed doubt as to whether regional and local government structures needed to be enshrined in a Constitution. The roles of local and regional governments were rarely stipulated in the constitutions of other unitary states. The organisation of local government and the extent and manner of devolution from the centre should be established through ordinary legislation (Discussion Paper, Para.84).

SWAPO's preference for a unitary state and unitarism is clearly a reaction to South African rule at the time. However, from the time of SWAPO's founding to its participation in the Constituent Assembly, it gradually became more amenable to second-tier government and thus more accommodative of a degree of constitutional decentralisation.

With the demise in 1977 of the Namibia National Council (NNC), which comprised

a number of factions, including The Association for the Preservation of the Tjamuaha/Maharero Royal House, its former members of the NNC issued a statement, in April 1977, in which they condemned the policy of divide and rule and the balkanisation of the territory, and resolved to join SWAPO and continue the struggle for a true and genuine independence for the territory as a unitary state, thus strengthening SWAPO as the dominant external political movement.

7.12.3 The Democratic Turnhalle Alliance (DTA)

In October 1977, a split occurred in the National Party of South West Africa. This party had been a federal component of the National Party of South Africa, and one of the two long-established white political parties in the territory. The other was the United National South West Party. Some seventy-three delegates to the National Party Congress held over this period left, together with Mr D.F. Mudge, a leading member of that party.

The break-away from the National Party of South West Africa subsequently led to the formation of the DTA in November 1977. The DTA was formed from eleven mostly ethnically based parties, one of which was Mr Mudge's newly formed white supported Republican Party. The DTA rejected the division of the territory into geographical areas or provinces and supported the idea of the territory being governed as one united country with a strong central government (Du Pisani, 1986:376:377).

Mr D.F. Mudge, Chairman of the DTA and a member of the Namibian National Assembly, describes the DTA as originally being comprised of ethnic groups.

However, during the early 1980s it was decided:

Ethnic groups could not work as building blocks for a constitution and the DTA came round to favouring a unitary state. The past history of Namibia smells of Apartheid and one had to get away from it (Personal Interview, 18 September 1992).

Mr A. Matjila, a DTA Member of Parliament, held that Namibia was too small for federalism and that from 1978, the DTA had preached unitarism (Personal Interview, 14 September 1992). He maintained that

all parties during the preceding election campaign were in favour of strong centralised government. All people realise that they must be close to the cake ... if people separate out they cannot benefit from the wealth of the country (Personal Interview, 14 September 1992).

In the DTA's Draft Constitution presented to the Constituent Assembly, it specifically referred to independent Namibia as a unitary state and referred to the establishment of Regional Councils, but no reference was made to ethnic groups. Thus, over a period of years, the DTA, like SWAPO, amended its constitutional principles.

7.12.4 Namibia National Front (NNF)

In response to the formation and deliberations of The Turnhalle, opposition forces met as the Okahandja National Unity Conference in 1975. In 1977 this Conference became the Namibia National Council and later the Namibia National

Front (NNF). In 1978 the NNF consisted of seven groupings, including the National Independence Party, the Federal Party of South West Africa, the South West Africa National Union (SWANU), the Damara Council, the Mbanderus, and the SWAPO-Democrats.

Initially at the end of 1976 and the beginning of 1977, the NNF was formed from a number of significant black supported opposition internal groupings, later joined by other groupings.

In 1977, in a document compiled by Mr Brian O'Linn, himself a member of the Federal Party but acting as a representative of the NNF, he maintained that there was more common ground between the parties to the dispute than at any time in the past. He referred to the consultations between the Five Western Powers and all interested parties in SWA/Namibia. The Five Western powers had, according to O'Linn, succeeded in gaining considerable support from African states and the international community. As a result, there was tremendous pressure on SWAPO and South Africa to accept these proposals. The Federal Party under the umbrella of the NNF, O'Linn stated, viewed itself as a centrist power block with the National Party, Republican Party and DTA as ethnic parties and alliances on the right, and SWAPO on the left. The document continued that the heavy emphasis from the right on ethnicity and race, and ethnic vetoes would result in extremely weak central government. By implication SWAPO was considered to be highly centralised (NNF document compiled by Brian O'Linn, undated).

In April 1978, the Front issued a Policy Manifesto detailing the alternatives to The Turnhalle. In this document, the NNF viewed itself as a component of a centrist power block and, the Republican Party as a component of the DTA,

differing little from the National Party. The Manifesto maintained that massive compulsory race and ethnic classification, together with the heavy emphasis on ethnicity and the ethnic veto, as advocated by the DTA and National Party, would result in extremely weak central government, continuous conflict and, in due course, chaos. The NNF viewed SWAPO, on the other hand, as being uncertain as to its true policy and intentions and believed that its actual intention was to take over government by force and to retain control by means of a dictatorship.

The NNF emphasised the necessity of national unity rather than ethnic identity and the differences between people and groups. It rejected the creation of tribal homelands, in whatever form they might occur, and advocated the adoption of a Bill of Fundamental Human Rights entrenched in a 'relatively rigid constitution' (Namibia National Front Policy Manifesto, April 1978), a uni-cameral parliament as the supreme legislative organ, and provincial councils which would deal with only matters of regional or provincial concern (Namibia National Front Policy Manifesto, April 1978).

Although not very specific concerning its constitutional proposals, the presumption was in favour of a centralised unitary form of government for the territory. The Federal Party associated itself with a NNF advocating a 'unitary Namibia', despite its belief in federation.

7.12.5 South West Africa National Union (SWANU)

Like SWAPO, SWANU was represented both inside and outside Namibia during the pre-independence period. It was founded in 1959 (Tötemeyer 1977:83). However, unlike SWAPO, SWANU did not spell out its policy in any great detail. In 1975

it was stated that 'the organisation stands for a "unitary, independent Namibia; from Okavango and Kunene River to the Orange River in southern Namibia, from the Namib to the Kalahari desert"' (Tötemeyer 1977:85-86).

At a National Congress held in Windhoek in June 1976, the party gave some insight into its policy in a number of resolutions. SWANU rejected the balkanisation of Namibia according to so-called ethnic groups, and reaffirmed that Namibia should be independent and a unitary State (SWANU National Congress Resolutions, 5-6 June 1976).

Mr V. Rukoro, Deputy Minister of Justice in a post-independence government, and a member of SWANU, an ally of the governing SWAPO party, described Namibia's preference for a unitary constitutional model as follows:

The history of Namibia is a history of racial and ethnic division. There is a need to promote cohesion in Namibia. Federalism may lend itself to abuse. For example, there is the problem of secession. Under federalism the Rheoboth and Caprivi regions could secede. Also the manpower requirements under a federal constitution are great. Namibia does not have the economic and financial resources (Personal Interview, 17 September 1992).

Mr Rukoro won a seat in the Constituent Assembly as the sole representative of the NNF.

7.12.6 Swapo-Democrats (Swapo-D)

The SWAPO-Democrats were formed in June 1978 and entered into an electoral alliance with the NNF, which was an internal political movement. The goal of the SWAPO-Democrats was to unite all the people of Namibia into a single mass organisation, to establish a modern, unitary, republican and independent state. The movement stated that it rejected any form of government based on ethnicity or tribal groupings. The movement did provide for the creation of provincial councils, but again emphasised that they should represent all the residents in a region regardless of ethnic group, tribe or colour.

The SWAPO-Democrats, in a policy statement, pledged themselves to the pursuit of national unity; the establishment of a modern, unitary, republican, independent state; and rejected a system of government based on ethnicity or tribal groupings (SWAPO Democrats. Programme and Policy. Undated).

7.12.7 Action Front for the Retention of the Turnhalle Principles (AKTUR)

On 17 May 1977, the 52 000 white voters of the territory went to the polls to vote in an all-white referendum on the question of the acceptability of the draft Turnhalle constitution for Namibia. Nearly ninety-five percent of the white voters supported the ethnic interim government as proposed by the Turnhalle, as a basis for final independence. Differences of opinion as to what these principles actually meant resulted in the formation of the DTA and AKTUR, which was formed in 1978 and consisted of six parties, including the national party of South West Africa.

A future leader of this party, Mr J.W.F. Pretorius, was later elected to the

Constituent Assembly as a member of the Aksie Christelike Nasionaal (ACN), together with two other members. It is therefore important to trace the thinking of this party as regards constitutional issues.

In response to the Five Western Powers' proposals for the election of a constituent assembly to draft a constitution for the territory, AKTUR argued that long term stability could only be attained by each of the eleven ethnic groups having an equal share in the composition of the Constituent Assembly. A constitution imposed by the numerical superiority of a particular group elected on the basis of one man one vote was unacceptable to AKTUR. This was a reference to SWAPO and its predominantly Owambo support base (AKTUR's Comments. 29 October 1981).

To justify its viewpoint, AKTUR referred to what it saw as a common characteristic of governments in Africa, that is strong centralised institutions in which authority is maintained by a few majority groups or combinations of groups. A monolithic government structure was not an efficient means to maintain minority rights and civilian freedom. The only alternative, the party felt, was to decentralise power to the lowest level at which justice could be done to attain the ideal of self-determination for protecting minority rights and civilian freedoms. AKTUR supported the establishment of an umbrella institution at the central level and the guaranteeing of the rights of the subordinate authorities against interference by the central or national government. Thus AKTUR advocated a federal arrangement of the territory, organised along ethnic lines at the regional level (AKTUR position paper circa. 1980/1981).

7.13 NEW INTERNAL INITIATIVES

7.13.1 The South African Government

By 27 September 1978, in a decision taken by the South African Cabinet, it was conceded that

the people of South West Africa, in accordance with their wishes, would have to be given the opportunity to elect their own representatives to a constituent assembly. That would be done on the basis of universal adult suffrage, in country-wide elections, in order to establish unequivocally who had the right to speak for the people of South West Africa (*Annual Review of United Nations Affairs*, 1977.1).

This was an early indication of a shift in South African government policy with regard to the territory.

7.13.2 Multi-Party Conference of South West Africa/Namibia

Following extensive consultations by Dr Willie van Niekerk, Administrator-General of South West Africa, a new internal initiative was taken in 1983 to resolve the constitutional deadlock. A conference consisting of sixteen political parties and movements was convened, and it was named the Multi-party Conference (MPC). Of the sixteen parties comprising the MPC, eleven were members of the DTA. The Conference's first document of note was the Windhoek Declaration of Basic Principles which was adopted unanimously on 25 February 1984. In general, these basic principles coincided with the Constitutional

Principles drafted by the 1981 Contact Group.

On 18 April 1984, the Multi-Party Conference produced a Bill of Fundamental Rights and Objectives. The Preamble set out the following aims,

independence and self-government ... national reconciliation ... stability and progress depend on respect for the rights of all in the prevailing diversity of Namibian society and that unity in that diversity with common loyalties to one state is desired by all (Cleary 1988:298).

These provisions were legally entrenched by the South West Africa Legislative and Executive Authority Proclamation (R101. 1985).

7.13.3 Constitutional Council

In 1985 a Constitutional Council was established by Act of the South West Africa National Assembly (Act no. 8 of 1985) in response to the earlier insistence of the Multi-Party Conference. The Council was constituted under the Chairmanship of Mr Justice Victor Hiemstra with an eventual membership of eighteen. Two draft documents were presented to the National Assembly on 30 June 1987. Fourteen of the eighteen members of the Constitutional Council voted for the main draft, and the National Party of South West Africa presented an alternative draft. The National Party draft advocated the establishment of Group Councils with legislative capacity in respect of each of the eleven groups designated, whereas the main draft focused on structures based upon class and ideology. The National Party's draft was rejected by the Council with a two-thirds majority.

According to Wiechers, many of the features of this draft constitution were tabled by the parties which later became members of the Constituent Assembly (Van Wyk et al. 1991:12). In some respects the proposals of the Constitutional Council reflected the 1982 Principles.

By this point in Namibia's constitutional evolution, the notion of a unitary state had been accepted. The debate which followed was concerned with the degree to which ethnic authorities would be accommodated. As Cleary states, members of the Multi-Party Conference, despite their diverse origins and ideological stances, felt bound by the Bill which they jointly forged. The Bill served also as a common frame of reference, drawing closer together from the extremes of the spectrum people who espoused group rights and political rights for minority groups (1988:342).

7.14 DRAFTING OF NAMIBIA'S INDEPENDENCE CONSTITUTION

The adoption of Resolution 385 of 1976 by the United Nations Security Council, marked a turning point in Namibia's progress towards adopting a centralised unitary constitution for the territory. This Resolution recalled previous United Nations Resolutions and ICJ rulings on the territory and, besides condemning South Africa's geo-political policies for the territory, called for United Nations supervised elections to be held for the whole of Namibia as one political entity.

Resolution 435 provided for the election of a constituent assembly to draft a final constitution for the territory. An election to comply with this requirement was held in November 1989. The results were as follows: SWAPO won forty-one of the seventy-two seats in the Constituent Assembly, The Democratic

Turnhalle Alliance of Namibia (DTA) won twenty-one seats, The United Democratic Front of Namibia (UDF) four seats, Aksie Christelike Nasionaal (ACN) three seats, the National Patriotic Front of Namibia (NPF) one seat, the Federal Convention of Namibia (FCN) one seat, and the Namibian National Front one seat (Nation Building: The U.N. and Namibia, 1990).

7.14.1 THE CONSTITUTION DRAFTING PROCESS

As provided for in Resolution 435, a Constituent Assembly comprising those seventy-two members elected to the National Assembly met for the first time on 21 November 1989.

In the first addresses by representatives of the political parties elected to the Constituent Assembly, references were made to the need to develop a 'national culture' (SWAPO); a commitment to the 1982 Principles (DTA and ACN), 'reconciliation and nation-building' (UDF); a 'national feeling of independence' (NPF); the need to create a nation (UDF); and maximum national unity and meaningful national reconciliation (NNF). Manifest in these principles was a real desire for, and a commitment to, the drafting of a suitable constitution for an independent Namibia. According to Professor Marinus Wiechers, a constitutional expert who participated in the detailed constitution-drafting process, the whole procedure was characterised by a minimal amount of ideological posturing (Personal Interview, 15 September 1994). A number of core principles were at this stage accepted by all of the parties represented in the Constituent Assembly.

On 21 November 1989, a motion was unanimously adopted, accepting the 1982 Constitutional Principles as a basis for a final constitution for an

independent Namibia. A further motion was adopted providing for the submission of each party's constitutional principles to the Acting Secretary of the Constituent Assembly, after which they would be debated, and committees established to resolve specific differences between the proposals.

On 4 December 1989, the debate commenced on the respective constitutional principles for the respective parties. In the SWAPO submission no specific reference was made to the unitary state. Oblique references were made to the need to avoid an all-powerful state, but no specifics were given.

In the DTA submission, it declared itself bound by the 1982 Principles. With reference to their provision for a unitary state, Mr Muyongo stated that he understood a unitary Namibia to refer to, 'a state that abides by the principles of territorial integrity and rejection of secession' (Constituent Assembly Debates vol.1., 4 December 1989:64). The DTA supported the establishment of elected councils for local and regional administration, and referred to 'regional autonomy' (Constituent Assembly Debates vol.1., 4 December 1989:67). In order to prevent a central government from depriving any region of its power 'through over-emphasised central control' (Constituent Assembly Debates vol. 1., 4 December 1989:67), it proposed that the regional authorities be effectively represented in the executive and legislature of Namibia. The suggestion was that regional authorities could be entrenched in this way. The DTA also indicated that it was not supportive of ethnic governments or any form of racial discrimination.

The UDF similarly committed itself to the 1982 constitutional principles and a unitary state, but stated that in view of the great expanse of the country

a number of elected regional councils should be established, as well as local government authorities.

The ACN pleaded for the greatest possible consensus to be reached in drafting a constitution for the territory. It referred to the great diversity of the territory, but the desire of the ACN was 'to achieve unity in this diversity with common loyalties to a single state' (Constituent Assembly Debates 1989:100).

The NPF was more specific concerning its constitutional proposals for an independent Namibia. Its constitutional ideas came from four sources: the 1982 Principles; the constitutional draft of the former Constitutional Council; the election manifesto of the NPF; and the views and opinions of the supporters of the NPF. The NPF believed that the territory should be unitary and decentralised and felt that federation was not practical for Namibia. Further, the NPF advocated a unitary state to avoid the 'assimilation of federalism with apartheid' (Constituent Assembly Debates vol.1., 5 December 1989:113); to ensure that the 'problems of tribalism are transcended and the country is united' (Constituent Assembly Debates 5 December 1989:113); and to avoid the related costs of a federation which could be expensive. The NPF went further and advocated a two-tier system of government, a central government, and municipalities and county or village governments. This proposal was justified on the grounds of unwarranted expense.

The FCN supported the adoption of a federal constitution which it believed would ensure the greatest opportunity for Namibians to participate in government and thereby promote unity amongst the population. It did qualify this by stating that in the interests of reconciliation, independence, peace,

freedom, national unity, stability and progress, concessions would have to be made by all parties in order to be able to achieve these goals.

A statement displaying a centralist outlook on a future constitution for the territory was made by Mr Hage Geingob. In an interview in June 1989, preceding the election, he said with regard to the SWAPO constitutional policy:

We believe in a basic democratic system. We want an executive with strong powers but there will be checks and balances - a separate legislature, an independent judiciary - to check the president's powers... We will allow a multi-party system. The problem with such a system is that you want to apply Western democracy in an area which does not have that political tradition or culture. We are having to mould a nation from different tribes (*Leadership*, vol. 8, no. 6. August 1989:108).

It was from the above-mentioned parties that a constitutional committee was appointed in proportion to their relative electoral strengths to draft the final constitution for Namibia.

Du Pisani describes the constitution-making process as the art of compromise, in that it was preceded by long weeks of hard bargaining between the diverse parties which included SWAPO as the majority party, the constituent parties of the DTA, the UDF, and the NNF (1990:199).

The drafting of the final constitution by the Standing Committee was preceded by a South African Judge's collating the drafts of all the political parties in one single document. Final drafts of specific sections of this draft

constitution were produced by three South African constitutional experts (Wiechers Personal Interview, 15 August 1994).

On 20 December 1989, the twenty-one member Committee on Standing Rules and Orders and Internal Arrangements (The Standing Committee) reported back on its work to the Constituent Assembly. It stated that all substantive issues had been resolved in principle, and a draft document submitted to a panel of three constitutional experts for finalisation. In the discussion of the draft constitution, which commenced on 29 January 1990, very little reference was made to the centralised unitary nature of the constitution. The constitution itself was adopted within a period of two months by the constituent assembly elected in the previous November election.

It was therefore necessary to determine what the policies of the participating parties were at the time of the meeting of the constituent assembly. The respective party policies were also a product of what was sometimes a long period of debate extending over many years, which is why it was necessary to trace the evolution of these parties.

7.15 SUMMARY AND CONCLUSION

The acceptance of a centralised unitary constitution for an independent Namibia was the end result of a complex interaction between a number of factors, beginning with the early settlement of the territory by whites and their need to control a vast land area, and concluding with the establishment of a Constituent Assembly in 1989 and the adoption of a centralised unitary constitutional form.

Early German colonisation was accompanied by military rule, which tends to be centralised and hierarchical. As was pointed out above, the German colonisers were intent upon establishing themselves as the legitimate rulers of the territory. During the early colonisation period, and in view of the vast geographic extent of the territory, communications were difficult, and therefore dispersed administrative control would have been a problem to manage. Further, resources were simply not available to allow for decentralisation of the administration of the territory. During the early years of German rule there was a debate in Germany over whether the colony was in fact beneficial to its interests, suggesting that the allocation of further resources for the territory would have been difficult to justify.

Early German rule established Windhoek as the legislative and administrative centre for the territory. Historical factors thus resulted in a precedent being established, where Windhoek was accepted by all role players within and outside the territory as the most important urban centre and the seat for the execution of legislative and administrative functions. This confirms the first hypothesis made above.

The political destiny of the territory, in the view of successive South African governments up until the 1970s, had been that it should be incorporated into a greater South Africa. Although, in the early years of South African rule, the German population favoured an independent status for the territory, the preponderant view amongst the white population was in support of incorporation into a greater South Africa. Since the white population was the ruling group in South Africa and South West Africa, and white interests were likely to take precedence over those of other population groups, incorporation was strongly supported. White opinion was the centripetal force supporting centralisation and in turn diluted centrifugal

forces supporting decentralisation within the territory. The belief in incorporating the territory as a South African Province was given support by making provision in 1949 for the election of Members of the House of Assembly and the Senate in the South African Parliament, and taking away power from the white population group of South West Africa. This form of representation was ended in 1977, after a period of twenty-eight years. Representation in the South African Parliament exerted a centralising function, particularly in so far as white administration was concerned. This centralising function set a pattern for the construction of future political and administrative structures. The development of this relationship confirms the second hypothesis made above.

As far as black administration is concerned, and following the Odendaal Commission Report of 1964, an attempt was made to decentralise in terms of the policy of creating self-governing territories. Although there was some support in the territory for this policy, the overwhelming opinion amongst the black population, both inside and outside the territory and amongst the international community, was against this policy, because it was designed to divide the population of the territory along ethnic lines. This opinion tended to reject the policy in its entirety and any constitutional forms, like federation, which might have resembled it or have been perceived to resemble it in any way. Much of this opinion was a reaction against a despised policy.

With the growth of African nationalist movements from the late 1950s, South West African society became polarised between the white group, which initially supported incorporation, followed by various forms of separate development and partition, and black groupings which supported, in general, a non-racial independent state of Namibia. The persistence in implementing racial solutions

in South West Africa led to a counter reaction by SWAPO and other parties proposing non-racial centralised unitary constitutional solutions for the territory. This confirms the third hypothesis made above.

SWAPO was, moreover, the dominant black supported liberation movement which obtained its support from the Owambo population group whose members comprised about fifty percent of the entire Namibian population. SWAPO won the attention of the international community as being the group offering a more just solution to the Namibian dispute, and was thus able to dominate subsequent negotiating forums and the Constituent Assembly. Simply through numerical inferiority, the smaller political parties operating within Namibia had to accept limited concessions in favour of regional government. This confirms the fourth hypothesis made above.

In the final few years before independence a remarkable degree of convergence in the thinking of the main negotiating parties began to occur. Individual parties and movements shifted from many of their original principles, compromised on a centralised unitary state and accepted a degree of geographic decentralisation. This can perhaps be explained by the fact that both sides reached a point of exhaustion, simply accepting compromises in order to dispense with the dispute. As the international community gradually gained an increasing influence over the nature of the constitution to be drafted for an independent Namibia, so the reluctance of the South African government and the smaller parties diminished with regard to their accepting a common destiny for the territory. The need to build a non-racial nation state was accepted by all the parties represented in the Constituent Assembly. Reconciliation was accepted in principle by all the parties involved, when it seemed that they

could no longer influence events to any great extent.

Mr S. Nujoma, leader of SWAPO who later became the first President of an independent Namibia, summed up the prevailing atmosphere at the time of independence, when he made the following statement shortly after his return from exile, 'the first thing we have to do is pursue a policy of national reconciliation I think that we really have to forget the past and build a new Namibian nation' (*The Namibian*, 19 September 1989). This sentiment pervaded the thinking of all the participating parties at the time of the election and during the deliberations of the Constituent Assembly.

Further illustration of the prevailing mood of reconciliation is expressed in the following debate on the draft constitution in Namibia's Constituent Assembly. Mr M. Muyango, a DTA representative said:

I want to believe that as we got rid of colonialism, as we get rid of apartheid we should not give any leeway whatsoever to bring it back in a different manner or what one can refer to as maybe using some constitutional tricks. I want to say here that we have seen what Africa has gone through. Some of our African brothers on this continent have tried a number of things in terms of constitutional arrangements, but all ended up in disasters (Namibia Constituent Assembly Debates, 29 January 1990:167).

Over the decades, several additional factors influenced the eventual adoption of a centralised unitary constitutional model for the territory. Although Namibian independence was granted several decades after all other former African countries had received independence, the thrust of African nationalist

sentiment pervaded the early black Namibian political movements, like SWAPO and SWANU. Highly centralised governing authorities were very much part and parcel of African nationalist thinking at the time.

As the international community became more involved in the dispute, constitutional principles were adopted over the years and reinforced through successive United Nations resolutions and reports. Moreover, through increasing contact over the years between the international community and internal and external political parties and movements, certain constitutional principles, like the unitary state, became more accepted and other issues became the topics of dispute. The international community through, for example, the Five Western Powers Contact Group, facilitated the process of compromise and convergence of opinion.

At the same time, the balance of forces emerged in favour of a unitary constitutional form for the territory. The belief in this type of constitutional form could not be completely rejected by those who might have favoured, for example, a federal form of government. Where there was a certain amount of give and take, and where thinking converged, was in the degree to which the unitary state should be centralised or decentralised.

Ultimately the struggle over detailed constitutional principle lay between SWAPO and the DTA, as the second largest grouping in the Constituent Assembly, with the DTA winning a concession in the form of limited decentralisation and regional governments for Namibia. This confirms the fifth hypothesis made above.

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 Mr D. Mudge - Member of the Namibian National Assembly.
 Mr V. Rukoro - Deputy Minister of Justice, Namibia.
 Mr H. Ruppel - Attorney General of Namibia.
 Prof C. Saunders - Department of History, University of Cape Town.
 Prof C. Tapscott - Institute for Social and Economic Research, University of Namibia.
 Mr V. Tonchi - University of Namibia.
 Prof G.K.H. Tötemeyer - University of Namibia.
 Prof M. Wiechers - Advisor to the Namibian Constituent Assembly.

Chapter 8

CONCLUSION

8.1 AN EVALUATION OF THE ORIGINS OF THE CENTRALISED UNITARY STATE

As stated in chapter 1, the main purpose of this thesis is to describe and explain the origins of centralised unitary constitutional forms adopted at independence, with special reference to the sub-Saharan African continent and Botswana, Zimbabwe and Namibia, in particular. In chapters 2 to 7, the identification and the diverse origins of the centralised unitary state, both historical and contemporary, and external and internal to sub-Saharan Africa, were analysed. The evolution of the centralised constitutional unitary state, specifically in Botswana, Zimbabwe and Namibia, was analysed because of the close geographical and historical relationship of these countries to South Africa, but also because of the diversity of their decolonisation processes. Botswana was decolonised much in keeping with the pattern in former British Africa but later than most former colonial possessions; Zimbabwe after a long constitutional wrangle and a bitter war; and Namibia after a long legal dispute involving the international community and a bitter war. The end result for all three was the adoption of similar centralised unitary constitutional forms, despite their diversity and the availability of different constitutional options.

As pointed out, a constitution is a political-legal expression of a variety of factors, both historical and contemporary, internal and external to a country. It is the dependent variable or end result of a complex variety of variables or factors that determine the constitution-drafting processes to greater or lesser degrees in different countries. There are a number of

general factors, as well as country-specific factors determining the constitutional form adopted by a state at a particular time.

8.1.1 The theoretical and historical dimension of unitarism

The theory, defined as thoughts, conjectures and ideas, underpinning the centralised unitary state has a long history and is analysed under various headings, including those of monism and absolutism. The general debate over the desirability or non-desirability of centralisation and decentralisation has continued for many centuries, but the preference one way or another has really only been embodied in constitutional documents in the past two centuries.

Just as the early political leaders and theorists attempted to address the divisions and conflicts in their contemporary states by creating strong centralised governments, so African leaders, following a similar approach, have tried to do the same. A tradition was created, which continued into the twentieth century, that centralisation was the best mechanism for coping with potential conflict within a state. Something tantamount to a theoretical fixation, in fact, developed over the centuries, in the form of an enduring belief that a strong centralised government could best deal with the needs of a fragmented society. Only recently, as a response to economic crises and ethnic problems, have the merits of decentralised constitutional government begun to receive attention.

The evolution of the centralised unitary constitution corresponds with Etzioni's conceptual scheme for the development of unified states, outlined in chapter 3 above. Each of the three case studies examined here is

illustrative of his four stages as modified for the purposes of this thesis. Each stage is referred to in conjunction with the experience of each of the three case studies.

Little ingenuity or inventiveness has existed amongst draughtsmen and elites, in the matter of devising constitutions to cater for the specific needs of diverse societies. In many parts of Africa British constitutional precedent played a very important role in determining the nature of constitutions adopted. What was adopted in one state was believed to be good enough for another, irrespective of important political and socio-economic differences. It was also believed by constitutional draughtsmen that the unitarism in the 'Westminster export model', as it has been referred to by S.A. de Smith (1964:77) and others, could be utilised in diverse countries and conditions. The idea of popular participation in a constitution-drafting process has received very little attention over the centuries. Elites, whether theorists, constitutional draughtsmen, civil servants or statesmen, have dominated the process. The perceptions of the needs of elites and the psychological climate prevailing at the particular time have prevailed upon constitution-drafting processes.

A belief has prevailed over decades that the integrated or unified society is the most desirable. Various degrees of monist visions, from abstract to concrete, have been predominant in the thinking of numerous theorists and statesmen. As a result they have advocated the adoption of centralised unitary constitutional forms, especially in racially divided societies, like those of Southern Rhodesia and South West Africa, in particular, as well as in other former African colonies, where up until independence white minority groups have dominated government decision-making processes. These minorities found

unitary systems of government consonant with their desire to dominate and control and thus protect their minority status. With the rise of African nationalist movements and the advent of decolonisation, members of these movements gained the upper hand in the negotiating process largely because of their numbers. They opted for centralised unitary states so that they could, in turn, dominate and control their subordinates. The assumption was that ethnic diversity could be accommodated and nation-building promoted by adopting a unitary constitutional form. The final constitution-drafting exercise which preceded independence generally took place over a short period of time. Precedent and the colonial inheritance have weighed heavily in favour of the perpetuation of the unitary state, as did the perceived need to minimise conflict through the domination and control of the centre. The division of sovereignty in general, that is the creation of federal states, simply could not be entertained as this would not permit the sought after objectives to be achieved.

The adoption of centralised institutions and unitary constitutional forms at independence was further reinforced by the persistence of these in one form or another in the three countries under study, from the earliest period of colonial settlement. It can be argued that these centralised institutions were the 'carriers of history' (as referred to in chapter 3) in that they evolved into the forms adopted at independence from similar structures which had come into existence in the past to achieve specific purposes. Institutions it is argued, go through a process of evolutionary change (David 1994). Etzioni's, *centralisation, take-off and termination stages* follow such a path demonstrating how history is borne from one stage to the next. According to his conceptual scheme, the drafters of the independence constitutions had a

certain amount of historical precedent to take into account when designing their respective constitutions.

The unitary state has functioned as the unacknowledged political-legal device for attaining the objectives mentioned above: the minimisation of conflict; and the facilitation of nation-building and national integration. The centralised unitary state adopted at independence has further laid the foundation for the increasingly centralised post-independence state which, in many instances, has become 'weak' or 'soft' and unable adequately to fulfil its functions. In many African countries, the possibilities of decentralisation and constitutional reform are now being reassessed, a process referred to in more detail below.

Independence constitutions also provide for centralisation in the cases where dominant political movements or modernising leadership elites are intent upon mobilising all groups in society in favour of certain political, economic or social goals. The goal of nation-building, by which is meant the integration of disparate ethnic and tribal groupings, is one such example.

Finally, a decolonising power does, in fact, decentralise authority away from the metropolis which awards sovereignty to the newly independent state. This decentralisation takes place in a horizontal direction. Horizontal decentralisation is unlikely to be accompanied at the same time by vertical decentralisation or devolution. In this process the centres tend to dominate while the periphery and interests in the periphery are played down. Since the metropolitan centre has already shed power, it is too much to contemplate further decentralisation to the periphery at the same time. The process of decolonisation and constitution drafting is driven by the centres, that is

either by a limited number of decision makers of the decolonising power; or by elites from the former colony. The process tends to be horizontal and centre-oriented; the periphery has very little input into the process. Existing autonomous regional authorities, established under colonial rule and headed by traditional leaders, tend to retain their powers, which, however, are not augmented during the constitution drafting process.

8.1.2 The general African experience

Although the specific origins of centralised unitary constitutional forms in the African experience have not been spelled out in great detail by academics or political leaders, several contributory factors do emerge. The issue of unity and nation-building comes to the fore time and again in the thoughts of African leaders, as illustrated in the literature referred to in chapter 4. Leaders did not want to lead states and head governments containing ethnic or regional groupings or classes in conflict with one another. The general perception was that internal federation or even decentralisation could result in conflict along these lines, which would threaten the security of leadership elites. Further, to settle for a highly decentralised state would be seen as depriving nationalist leaders of their hard won victory. Nationalist leaders, like the colonial rulers before them, wanted control of the centre, and the perception was that a decentralised state would be seen to deprive them of their victory over colonial rule. As stated in chapter 4, the tendency was towards establishing a society that was 'focal institutional'.

Economic development was also important and the belief was that central planning, in terms of Marxist and socialist thought, was necessary to achieve this goal, which would then be facilitated by a unitary constitutional form.

It was also understood by many of the leaders involved in constitution drafting that federal government was more expensive and slower than unitary government. Poor countries could simply not afford federations. Moreover, in poor countries of great geographical extent, where skilled personnel were in short supply, governmental structures were of necessity more centralised, simply because there were fewer skilled personnel to administer regional and local authorities. This was the case in early colonial Bechuanaland, Southern Rhodesia, and South West Africa. The early characteristics shared by these three former colonies correspond with Etzioni's notion of the *pre-centralised stage*.

Decentralisation in a unitary state was seen as having similar disadvantages to that of federation, although a clear distinction was seldom made between these concepts. 'Regionalism' and 'balkanisation' were the notions used to label and reject decentralisation and federation. Kwame Nkrumah, former President of Ghana, was perhaps the pre-eminent leader in Africa in the 1950s and early 1960s. His influence on the continent steered states away from decentralisation and federation. Moreover, he was partially responsible for creating a 'climate of opinion', a psychological climate, which was not in support of decentralisation or federation. At the time of independence, the general opinion amongst African leaders, supported often by Marxist and socialist thought, implicit in the idea of Pan-Africanism, was that the larger the political unit, the better it would be for African independence and its preservation: existing boundaries determined by former colonial rulers had to be retained, but greater political associations or federations should be created.

8.2 BOTSWANA, ZIMBABWE AND NAMIBIA COMPARED

Whatever the similarities and differences of the three case studies analysed, in terms of historical backgrounds and decolonisation processes, at the time of independence, all three countries opted for centralised unitary constitutional forms. In several respects the early historical evolution of the three was similar. Their later constitutional evolution, however, in particular that of Zimbabwe and Namibia, differed from that of Botswana and other African countries. What then were the over-arching factors which cancelled out the differences between the three countries? What led each of them to adopt a similar centralised unitary constitution, to reach, in other words, Etzioni's *termination stage* - the centralised constitutional unitary state? To answer these questions, the similarities and differences between these three countries during their years under colonial rule will be examined and comparisons made.

All three countries were colonised at more or less the same time, that is in the 1880s. The British were invited by chiefs in Bechuanaland to protect them against land claims and in situations of conflict; Southern Rhodesia was colonised by the British South African Company (referred to as the 'Company' below) to exploit the mineral resources of that territory, as well as to contain conflict situations; Germany colonised South West Africa and established military rule, to protect the inhabitants in conflict situations. The nature of the administration in these three territories in the early years of colonisation was quasi-military, small and oriented towards containing situations of conflict, rather than developing the territories politically or economically. This type of quasi-military rule laid the foundations for later

administrative and constitutional developments - that is Etzioni's second stage - *the centralisation stage*.

The resources available to the early administrators of the three territories for economic development were limited. It was only in the 1930s that the British considered development issues in the Bechuanaland Protectorate. The Company was motivated by profits rather than development considerations during most of its rule of Southern Rhodesia. Doubts were expressed in Germany in the first decade of the century as to whether it could afford the colonisation of South West Africa. The early administrations in all three territories were, because of limited resources, small, centralised and run on as limited a budget as possible from a particular geographic locality. In the case of South West Africa and Southern Rhodesia, Windhoek and Salisbury were the early administrative centres and became the capitals and centres of government and administration at independence. Once established, they continued to be recognised as important centres of government and administration. This coincides with Etzioni's *take-off stage*. The single administrative capital of the Bechuanaland Protectorate was initially located in South Africa and moved to Gaborone at independence.

The way the black population, in particular, was ruled in each of these territories left its mark on later constitutional evolution. Because of the method of indirect or parallel rule in the Bechuanaland Protectorate, a centralised government for both the African and white population groups only emerged at a late stage and was largely brought about through the initiative of African elites. In the case of Southern Rhodesia, with its relatively large but insecure settler population (as compared with Bechuanaland) and the necessity for Company rule, a centralised government was established at an

early stage, which tended to dominate the parallel administrative structures set up to rule the African population. Finally, in the case of South West Africa, military rule laid the foundations for early centralised rule, followed by South African rule, during which one set of structures was created for the white population, another parallel set for the black population, the latter structures being dominated by local white rulers and representatives of the South African government.

The debate which arose at various times in the colonial history of each country, as to whether it should be incorporated into its stronger neighbour, South Africa, since all three territories adjoined that country, was another important variable in establishing the foundations for centralised government and administration. The exceptions were the Tati district of eastern Bechuanaland, which it was thought, at one stage, should be incorporated into Southern Rhodesia, and Southern Rhodesia, which it was thought should amalgamate with Northern Rhodesia, and which did eventually join a federation with this territory and Nyasaland. The threat of incorporation constrained centrifugal forces which might have led to the evolution of a concrete monist (referred to in chapter 3) or even federalist political culture in those societies, which might, in turn, have resulted in the establishment of strong regional administrations.

The role played by elites was a further critically important variable in the constitutional evolution of the three territories. No unified articulate white group of any size emerged in Bechuanaland to press either for independence for the territory, or for an alternative to a centralised unitary state. African elites performed this function. In terms of Etzioni's conceptual scheme, internalisation occurred, in the form of one modernising elite organised

around the Khama family. This elite tended to dominate the traditionalist elites, and especially the tribal ones, who were less strongly in favour of a centralised unitary state.

In the case of Rhodesia, White elites initially dominated the constitution-drafting processes from the time of Mr Cecil Rhodes and the Company at the turn of the century, to Mr Ian Smith, Prime Minister of Rhodesia in 1979. Only in the 1950s and 1960s did African elites emerge to challenge white dominance, by which time the basic constitutional form for the country had been in existence for some time and had set a precedent for future constitutional revisions. As far as South West Africa is concerned, the white population group was always fairly active politically, but divided within itself. Over time this group advocated a variety of different constitutional options for the territory. It was only in the late 1950s that credible black opposition emerged, which was eventually able to dominate the process, build on constitutional precedent and, through its strong local and international support base, bring about the acceptance of a centralised unitary constitutional form for the territory.

Conflicts between settlers or whites and indigenous population groups was a critically important variable in shaping early and later unitarist thinking. In both groups these conflicts contributed to the development of a unitarist political culture from an early stage. Besides the conflicts referred to between African groups within the three territories in the early part of colonial rule, conflict also occurred between white settlers and black inhabitants. Of the three, the Bechuanaland Protectorate experienced the least degree of conflict between white and black, probably because land, trade and economic resources in that territory were of less importance to the colonising

power. The settler population was proportionately smaller there than in the other two territories. In Southern Rhodesia and South West Africa, the economic stakes were far higher and the conflicts between the settlers and the black populations were intense, with many people losing their lives.

The early conflicts impacted psychologically upon the white settler groups, encouraging them to look towards strong governments which they could control and which would assuage their insecurity and fear, as well as protecting their interests. The reluctance to relinquish political control in these two countries later resulted in further conflict, beginning in the 1970s, which led to international intervention directed at solving the conflict. This intervention, in turn, impacted upon the constitution-drafting processes. Because of the reluctance of the white minority groups in Rhodesia and South West Africa to relinquish political control, supported in the latter case by the South African government, the United Nations and the international community became involved in formulating independence constitutions for both territories. In the case of South West Africa, the international community, through the United Nations, determined that the territory should be a unitary state. In the case of Rhodesia, British unitarist political culture and precedent, originating both from within the territory and from outside, determined that the independence constitution should also be unitary. The Bechuanaland Protectorate decolonised in a more conventional way, following British precedent as applied in other former colonial possessions.

The decolonising power also played a role in this process. In the case of Zimbabwe and Botswana, that power was Britain; in the case of Namibia, it was South Africa, together with the international community and in particular the Five Western Powers, who were also members of the United Nations. Britain, in

this case, was a less significant party in the process. In so far as Zimbabwe and Botswana are concerned, British unitarist notions, like those contained in the Durham Report (referred to in chapter 4), carried through into the constitution-making process, since the British Foreign and Colonial Offices were directly involved in negotiating and drafting the respective independence constitutions. In the case of Namibia, the decolonising power, South Africa, the United Nations and internal parties were involved in drafting the independence constitution. The United Nations set the parameters for the independence constitution, while the South African government exerted both a direct and indirect influence through the political party process in the territory, in favour of a decentralised power structure and regional governments. However, the unitarist beliefs of the United Nations and the stronger, internal, largely black supported political parties prevailed and a unitary constitution was adopted, with certain checks on the abuse of power, such as a bi-cameral legislature and the adoption of a largely ceremonial office of president.

Different factors come into play at different times in the constitutional evolution of a country. There was approximately a twenty-four year gap between the independence of Botswana and Namibia. Botswana took many of its constitutional cues from the independence experiences of other parts of Africa, like the creation of single legislative councils in the former colonies such as Gambia, Kenya, Nyasaland and Uganda. It was also inspired by the ideas of Pan-Africanism, which had an influence on Africa in general.

Above all, the need for nation-building was seen by African leaders in all three countries as being of prime importance. In particular, in the case of Zimbabwe and Namibia, the political cultures of those countries had been

highly fragmented by white minority ruling classes, and the belief was that nations had to be forged out of those societies. Even within the African population groups in those countries, Botswana included, fragmentation had occurred along tribal lines, making consolidation necessary. A centralised unitary constitution was seen as a natural corollary to the process of nation-building.

The proximity to political power also determined whether a racial or ruling group favoured a monist or pluralist constitutional order. The early white settlers in Rhodesia were monist, in that they supported a strong, single, central authority in order to dominate the territory of Southern Rhodesia. When Rhodesian independence became a disputed issue confronting them with the loss of political power, however, they began to think in more pluralist terms and in the late 1960s internal federation was actually considered.

In the case of Bechuanaland, the relatively small, white population never dominated a legislative authority. It did participate in a White Advisory Council, with the reins of power held by British Colonial officials until approximately six years before independence. It was the modernising African elite of Bechuanaland who were monist, in that they stood to gain and retain political power in a centralised unitary state, whereas the traditional leaders of the eight major ethnic groups were pluralist, in that their power bases would be at risk in a centralised unitary state.

Likewise, in Namibia, SWAPO supporters were monist in their approach to the state, since they were likely to gain political power as a result of their numerically stronger support base, amongst the Owambo, in particular, whereas the white group and other smaller groups were more pluralistic in their

approach to constitutional issues, in that they were likely to lose political power in a centralised unitary state. For this reason they favoured, at one time or another, a decentralised unitary state and variations of federation, regionalism and partition, in the belief that they might be able to retain some political power for themselves.

The unitary state is only one of a number of device employed by leaders to build a nation. It operates as a latent device and it is simply accepted that nation-building can and should only occur under a centralised unitary constitutional form. It has, in fact, been underplayed as an important organising device in former African colonies.

In explaining the adoption of centralised unitary constitutional forms, one needs to take into account the historical time period during which the constitution-drafting process takes place. In Africa, during the 1960s and after, as well as during periods of rapid transition, there was a general urgency to attain independence. In such circumstances little thought is given to major constitutional innovation. As pointed out in chapter 1, constitutional forms evolve as a result of a complex interplay of factors, both internal and external to a country. This has proved no different in the cases of Botswana, Zimbabwe and Namibia.

In-depth case studies of the adoption of centralised unitary constitutional forms at the time of independence have been the focus of three of the chapters comprising this thesis. The three countries dealt with differ in terms of their history, demographic composition, geographic extent, economies, decolonisation processes and relations with the international community. However, each of these countries adopted a centralised unitary constitution

at the time of independence, despite the diversity of the three.

This can perhaps be ascribed mainly to the climate of opinion prevailing at the time, both within the international community and among the nationalist movements in the three countries. It was believed that the centralised unitary state would address the needs of each, while providing for a just, non-racial democratic order. In the case of Zimbabwe and Namibia, in particular, constitutional forms which would favour the retention of power by the white group were simply not acceptable. A unitary constitutional form, it was believed, would ensure a future, non-racial, democratic political order in those countries. It could also be seen as a reaction against the different policies of racial segregation practised in Rhodesia, South West Africa and South Africa.

A question which might be asked here is whether the three countries under discussion could have evolved along different constitutional lines. Could they not have adopted decentralised unitary constitutional forms? Of the alternatives available to them, partition was not acceptable, since it might have suggested an approach akin to South Africa's separate development policy as applied at the time and reviled in most African states and throughout the world. Federation was also unacceptable for the reasons mentioned above, but primarily because of the possibility of state disintegration. All three states had been characterised by degrees of decentralised government in their early years. Increasingly, however, centralised government became inevitable, as the need for and belief in integrating their respective societies arose. The *termination stage*, in the form of the centralised unitary constitutional form, was probably inevitable in the light of the climate of opinion and circumstantial factors prevailing at the time. It was seen as a virtual

guarantee against discriminatory racial practices within the territories concerned.

Two further questions arise - but these are matters for further study. Has the centralised unitary constitutional form, in fact, served the interests of these countries? What constitutional form might more appropriately be implemented? The literature on Africa in the 1990s (referred to in the Postscript below) seems to suggest that the centralised unitary constitutional form and the lack of democracy have failed to promote economic prosperity in many countries on the African continent, and some are advocating a process of constitutional reassessment. This might reflect a change in the climate of opinion, that could usher in constitutional forms providing for decentralised decision-making in many states in the future.

The connection is currently being made between constitutional form and economic performance, in particular. The earlier belief in centralised planning for economic development is now being questioned. Despite the lapse of twenty four years between the independence of Botswana and that of Namibia, little correlation was made during that time between the two factors. Even by 1990, the connection between constitutional form and the lack of economic performance had failed to be made in a very coherent or compelling manner. Unitary constitutional forms were first and foremost directed at solving political issues. The lack of economic performance (as opposed to centralised economic planning), was therefore not a factor in the drafting of centralised unitary constitutions in any of the three countries under consideration.

8.3 SOME PROPOSITIONS

In conclusion, the following can be taken as a few general inductive propositions which determine under what conditions an African state is likely to adopt a centralised unitary constitutional form, in preference to a decentralised one, a federation or partition. It is important to note that these propositions hold true for the case studies under consideration. Another set might emerge from further such investigations.

1. When a territory decolonises or severs its legal ties with the metropolis, it is likely to opt for a centralised unitary constitutional form and a minimal degree of decentralisation of power; and certainly no more than that which already exists in the colony concerned. This is explained by the fact that the central authority in a newly independent state is likely, during the first few years of its existence, to want to concentrate on consolidating its hold over its territory and population. Since a central authority assumes legal authority and power from a foreign government, it is unlikely at that time to entertain the possibility of distributing its authority and power to a lower or higher tier of government.
2. Where a state's boundaries are not final and a closer political or legal relationship either as a member of a greater unitary or federal state is possible or probable, the state is likely to retain, or opt for, a centralised unitary constitutional form. Moreover, where there is a possibility of secession of a geographic or ethnic entity from a larger governmental authority,

the latter authority is also likely to support the retention or adoption of a centralised unitary constitutional form. In these circumstances, if a central authority feels insecure or could be deprived of some of its power and authority, it is unlikely to want to distribute any of it to a lower or higher tier of government.

3. States which have the potential for conflict along ethnic lines are then likely to opt for a centralised unitary constitutional form. The decentralisation or devolution of power to authorities which could challenge the power of the central authority cannot be considered here. The decentralisation or devolution of power to geographic entities which could coincide with ethnic identities is particularly feared as this could result in ethnic mobilisation against the central authority. This fear is reinforced when former colonial powers have recognised ethnicity in their political and administrative systems of rule.
4. Where leaders of nationalist movements have been in the forefront of the removal of colonial control and stand to govern the former colony after independence, they will tend to favour a centralised unitary constitutional form. After possibly a protracted period of nationalist activity or even conflict with a former colonial power, a leadership elite is unlikely to want to surrender any authority or power to a lower or higher tier of government. The longer the period of nationalist activity and the more intense that activity, the less likely the leadership elite will be to

concede any political power to a lower or higher tier of government.

5. Where the dominant perception in a former colony amongst leadership elites is that there is a need to embark upon a process of modernisation and nation-building, the leaders will opt for a centralised unitary constitutional form. The perception is likely to be that a strong central authority will be in a better position to achieve these goals. The leadership elite which is to assume power must be entrusted with sufficient authority to override centrifugal forces and promote centripetal ones, so achieving its goal.
6. Aspirant leaders in states which have been or are in a decolonisation phase will perceive centralised unitary states as being more powerful than federal states, and will attach greater prestige to a strong, centralised constitutional form rather than to a decentralised one, or to a federal constitutional form. This perception is partly derived from the view of the former ruling elite in the unitary colonial state and in the metropolis, as being all powerful, and able to make decisions and execute policy at will.
7. Where one group stands to gain or retain political power at the expense of another, it is likely to favour a centralised unitary constitutional form. Where one group outnumbers other possible competitors for power, that group is likely to favour a centralised unitary state so as to limit or deny power to others

who may challenge it. The converse of this is that if one group is likely to lose power at the central level then it might support decentralisation or devolution under which it could retain a degree of power and authority.

8. When a constitution is being drafted for a new state, the climate of opinion and ideology prevailing at the particular time, determining whether it should be unitary or federal, centralised or decentralised, or focal institutional, will dominate. The ideology imparted by leadership elites schooled in such ideas whether it be monist, pluralist, Marxist or of a socialist orientation, would carry through into the constitution-drafting process.
9. If a country has had a strong history of centralisation, for example, this inheritance is likely to influence the constitution-drafting process and the nature of the resulting constitution. This is explained by the fact that it is difficult to modify or radically alter institutions which have evolved over a period of time and have established a momentum of their own.

8.4 POSTSCRIPT

8.4.1 CONSTITUTIONAL REASSESSMENT IN BOTSWANA, ZIMBABWE AND NAMIBIA

Since independence and up until the mid 1990s, neither Botswana, Zimbabwe nor Namibia had undertaken any meaningful constitutional reform or decentralisation of political power, such as might have occurred in other

parts of the continent, and certainly no devolution of power, as is understood by the concept referred to in chapter 2.

8.4.1.1 Botswana

In Botswana in the 1980s the emphasis was on deconcentration rather than decentralisation of central government administrative functions to district administration. No provincial level of government exists between that of national and district. The four main institutions at the district level are the district administration, district council, land board and tribal administrations, which are predominantly elected authorities. These local government institutions have persisted and been fairly stable throughout most of the post independence period (Gasper in De Valk et al. 1990:224-225). District Councils have persisted during this time, probably because of their lack of association with the colonial era and a political culture which tolerates a degree of opposition (De Valk et al. 1990:234). The attitude of central government is that the reform of District Councils should be administrative, that is, more training and resources should be given to personnel; and that continued or even strengthened central control is required.

De Valk (1990:245-246) puts forward several views as to why no further decentralisation is contemplated. Amongst others is the reduction in diamond revenues, which has meant less money for allocation to local authorities; the need to keep councils weak in case they become centres of strong opposition; fears of a centralised elite concerning security; and the belief that the centre performs better than district and local authorities.

8.4.1.2 Zimbabwe

The role of ideology, and particularly that of ZANU(PF), has been an important factor in determining the degree of centralisation or decentralisation in Zimbabwe. Over the years, the role of ideology in the organisation and operation of the state and its functioning has, in fact, been of paramount importance. Primacy during the early years of independence was given to the consolidation of state power by ZANU(PF), the creation of a centrally planned economy and a dominant state sector (Gregory 1987). In 1987 former Prime Minister, Robert Mugabe, described the ruling ZANU(PF) party as having a democratic centralist structure and procedure. Power was further concentrated at the centre through the introduction in 1988 of an executive presidency.

At the district level, the Zimbabwean government concentrated in the post-independence period on the consolidation of the Rural Councils and the African Councils into new District Councils. These Councils had great symbolic significance and important legal responsibilities, but in practice their capacity was quite limited. Staffing and financing remained under the control of the central government. Periodically, during the 1980s, the issue of increased decentralisation was raised. For example, in 1988 a call was made for the allocation of budgets to provincial governors. This proposal was rejected on two grounds: the introduction of independent budgets would make accountability more difficult; and there was a need to restrain fiscal expenditure (Helmsing 1991:35).

Decentralisation in Zimbabwe in the 1980s and beyond was seen in relation to the need for national integration and integrated planning and the tendency was towards centralisation to achieve these goals. It was felt that a small

centralised unitary state which was inherited in 1980 could more easily be run from the centre (Helmsing 1991:33).

Following the 1995 general election in which the ruling ZANU(PF) party won 118 out of the 120 elected seats in the legislature, calls were made for the holding of a national conference to draft a new constitution for the country (Chakaodza 1995). These calls were made by academics, church leaders, opposition politicians, human rights activists and cabinet ministers. Much of the criticism of the 1980 constitution was directed at the need to reform the electoral system which was heavily biased in favour of the ruling party.

8.4.1.3 Namibia

Since the Namibian Constitution was only negotiated in 1989/1990, no consideration is being given to the reconstitution of the unitary state in that country. Probably the most important constitutional issue under consideration in the post-independence period is the allocation of powers to the thirteen newly created Regional Councils.

In terms of chapter 12 of the 1990 Namibian Constitution, provision is made for decentralised administration which, as was pointed out above in chapter 7, was a concession to opposition groupings in the Constituent Assembly. It was only after independence in 1990 that the President of the Republic of Namibia, in terms of Proclamation no. 12 of that year, appointed the first Delimitation Commission for the country to delimit regions and constituencies. The Delimitation Commission's report on 30 June 1991 made provision for thirteen regions in the country. This was followed by the passing of the Regional Council Act no. 22 of 1992 which allocated functions or tasks to

these Councils. Elections were held in the thirteen regions in November 1992, to elect ninety-five councillors and forty-five local government authorities.

It was thus only in 1993 that these Councils came into being. In practice few functions have been allocated to the regions since their establishment. There are a number of factors constraining the allocation of functions to the regions. Some of these are as follows:

- the silence of the Constitution on the scope of power and authority to be allocated to the regions;
- the insecurity of Regional Councils in relation to the government hierarchy. They have no back-up traditions nor is there a culture of regionality in the country;
- a scarcity of financial resources and a lack of human capacity;
- an association at the central government level of Regional Councils with the former Apartheid Bantustans;
- and also a fear by traditional leaders of a loss of autonomy (Tötemeyer 1996).

No enthusiastic support was shown by SWAPO representatives in the 1989/90 Constitutional Committee for decentralisation. This lack of enthusiasm has probably carried over into the post-independence period of government where it is feared that regional government will erode the power of central government. The national government, conscious of the unitary system, it is argued, will be selective in the powers which it allocates to Regional Councils (Tötemeyer 1995).

The centralised unitary state it appears, is therefore highly prized amongst

Namibian elites and it will probably take some time before the fear of centrifugal forces in the greater society are overcome and meaningful decentralisation takes place.

8.5 THE REASSESSMENT PROCESS IN AFRICA

The post-independence African state, its organisation and functions are very much in a state of flux at the present time. Numerous commentaries and analyses have appeared in the 1990s suggesting the restructuring of the public domain and promoting political reform. The performance of institutions, including constitutional forms, is being called into question in the literature. Some examples of this literature are: Wunsch and Olowu 1990; Rimmer 1991; Governance and Development 1992 (World Bank Report); Widner 1994; Olukoshi and Wohlgemuth 1995; Zartman 1995; Mamdani 1996; Havnevik and Van Arkadie 1996; Ellis 1996; Munro 1996; Leftwich 1996; and Hope 1997. These and other commentaries have been inspired by the declining competence and performance of African governments; and more specifically by Africa's economic decline. This, in turn, has led since the 1980s, to the implementation of International Monetary Fund (IMF)/World Bank economic structural adjustment programmes.

The commentaries and analyses have dealt more particularly with questions of democratisation, individual freedoms, rights and responsibilities, liberalisation, governmental accountability, decentralisation, governance, leadership, the legal framework for development and, only in a peripheral manner, with the fundamental constitutional order within the state. The reassessment of the African state and its role and relationship to society has

been in progress for some time. Yet, practical fundamental change or reform on the ground has been slow to materialise. As in the pre-independence period, limited mention is made specifically of unitary or federal constitutional forms. The closest and most frequent references to unitary and federal constitutional forms are those made to the notions of centralisation or decentralisation. The fundamental constitutional order in the African state, as is pointed out below in reference to some of the recent literature on the topic, is only gradually coming into focus.

According to Tordoff, writing in 1994 on decentralisation experiments in sub-Saharan Africa in general, the majority of the states in the region up until the late 1980s tended to reinforce central control rather than enhance local autonomy. However, since the late 1980s, a number of states have, encouraged by the democratisation process sweeping the continent, attempted to promote meaningful decentralisation. The centralising trend of the 1980s, he maintains, was checked as African states became subject to the 'democratic' wave sweeping across the continent (Tordoff 1994:558).

As stated in chapter 1, the notions of the unitary constitution and unitarism are embedded in various ideas like the search for political stability and nation-building. This applies also to Africa's post-independence period. The problems which afflict the African continent are described in various ways and include references to 'Africa's economic crisis', 'political instability', 'poor governance' and 'economic decline'. References to political solutions, include amongst others, the advocacy of democratisation, multi-partyism, decentralisation, accountability and good governance. As stated in chapters 1 and 4, the role of constitutions and constitutionalism has been downplayed,

even ignored in the colonial period and the first two or three decades of the post-colonial period in Africa.

8.5.1 Some references to the literature

With increasing frequency, authors writing on the economic plight of Africa are suggesting either institutional or structural reform (referred to in a broad sense and interchangeably) and occasionally constitutional reform, as a necessity for the return to prosperity and stability. The literature is now suggesting a linkage between institutions, structures and constitutions and economic development. A number of examples are referred to below.

An argument taken up by Aron for example, is that the future prospects for growth in Africa are strongly circumscribed by its political, economic and legal institutional foundations (Ellis (ed). 1996:96). For effective performance of institutions, oversight or monitoring structures are necessary complements. Aron further argues that for oversight structures to be effective, 'deep-seated constitutional change' is probably necessary. An effective constitution would assume the existence of a strong civil society which could challenge governments and would, moreover, have to be accompanied by reforms such as the decentralisation of power to assist in this process (Ellis (ed). 1996:114). Taking this argument further, she maintains that the prospects for Africa's growth are circumscribed by the lack of constitutional reform.

Dramé writes in a similar vein about the crisis of the state in Africa. He refers to the crisis of confidence between the state (governments) and society in Africa. The state (government), he argues, has monopolised key positions

and roles in economic activity and public life. It has, in addition, played a key role in the redistribution of national wealth and the development of the middle classes which have benefited from this process. With the decline in economic well-being and the increasing repression in many African states, these classes have come into conflict with central governments and are calling for a redistribution of power. State (government) structures need to be reformed and the 'principle of devolution of responsibility to the grassroots communities and their institutions' (Ellis (ed).1996:210) will have to be taken into account.

Clapham refers to limits of state (government) power and the need to reconcile the partial autonomy of different regional, ethnic or religious sections of the community by means of a mechanism to ensure their access to central political institutions (Rimmer (ed).1991:103). He proposes that, with the advent of multi-partyism, opposition groups which were formerly repressed may be accommodated in regional arrangements and *de facto* federalism becomes more practicable.

Munro (1996:112-148), in his study, *Power, Peasants and Political Development: Reconsidering State Construction in Africa*, argues in support of state centred analyses rather than analyses focusing on, for example, the fragmentation of politics, processes of economic disengagement and areas of social life which fall outside the ambit of the state. He argues that the state is pivotal to the political futures of African countries, maintaining that one cannot make proper sense of political power and development without examining a regime's attempts to forge state (government) authority and conceptions of citizenship. For a proper understanding of state politics in Africa, he says, one must use central institutions and structures of the state as a starting point for

analysis. This is suggestive of the additional need to analyse constitutional forms in the African state.

Mamdani, in an analysis of contemporary Africa and the legacy of late colonialism, typifies the pre-independence African state (colony) as being a decentralised despotic state (colony) (1966:25). But in the pre-independence period, the decentralised despotic state (colony) exacerbated ethnic tensions, so the solution seemed to be centralisation. The colonial state became the centralised despotic state. In the post-colonial period, centralised despotism, however, exacerbated the urban rural divide, and the solution, according to Mamdani, now again appears to be decentralisation (1996:291).

Zartman's work, *Collapsed States: The Disintegration and Restoration of Legitimate Authority*, is another suggestive of the plight of the post-independence African state. He proposes four areas which might be focused upon in the reconstitution of the African state: power; participation; resources; and external assistance. With regard to power he says that state (government) structures need to be reconstituted from the bottom up, through the use of some temporary agent at the top so that the state (government) can return to the centre of social and political organisation in civil society (1995:269). As regards participation, legitimacy must also be restored through constructive, freely expressed support on the part of society. Structures for institutionalised participation need to be created through the holding of a national convention in which a constitution would be designed to provide the foundations for a normative and legal political order. Resources need to be allocated from both internal and external sources in order to assist in the reconstitution of the state (Zartman 1995:270-273).

The World Bank (1992) refers to such concepts as good governance, accountability, a legal framework for development, information and transparency. It stops short, however, of suggesting constitutional reform or the reconstituting of the state as a panacea for the Third World's economic crisis. These notions in order to function successfully, it is argued below, require a state based on constitutionalism.

Leftwich maintains that in Western circles democratic good governance is now considered to be a necessary condition for development (1966:4). From a developmental point of view, he argues that it is the primacy of politics, the character of the state (government) and the institutional ideal of good governance which are necessary for development (1966:18).

Finally, Hope writes on the restructuring of the nation-state as a prerequisite for growth and development in Africa. He claims that political power should be fairly distributed among all communities, while decentralised political, administrative and fiscal structures should be components of the restructuring of the nation-state (1997:183).

8.6 CONCLUSION

8.6.1 The prospects for constitutional reform in Africa

The African state and its performance, or lack of performance, are viewed by the above-mentioned authors and others from a number of different perspectives. The common thread which runs through this body of literature is the need for reform of the African state and the suggestion that constitutional reform, which includes lesser reforms but also that of

centralised unitary constitutional forms, could be important in this process. The belief in vertical integration (referred to by Shils 1982, chapter 3 above) and high degrees of centralisation is also likely to be questioned with increasing frequency. The reassessment of the performance of post-independence African governments, which in many cases do not function constitutionally, is likely to gain ground for the reasons mentioned below.

Broad based nationalist sentiment as an integrating force which drove the independence process is now of little significance in the African state. Regional and ethnic loyalties can and do periodically assert themselves, demanding special accommodation in new constitutional forms. Since nation-building processes in many parts of Africa have not obliterated regional and ethnic loyalties, a different approach could be taken, as argued by Selassie (1992), which acknowledge and accommodate these factors in new constitutional forms without impairing national unity and stability.

Further, the demise of many of the original nationalist leaders and the emergence of new leadership elites educated in the post-independence era could result in a different view of constitutional alternatives, since there is no longer an external colonial enemy nor have post-independence expectations materialised. New leadership elites are therefore likely to relate to the political processes in their respective countries in different ways, and to create the space for constitutional innovation supported by a new world ideological climate. The world in general has entered this climate, referred to as 'neo-conservatism' or 'neo-liberalism', which emphasises markets, deregulation, privatisation, supply-side economics, individualism, competition and the 'enterprise' culture (Leftwich 1996:13). Traditional Marxist and socialist doctrine has greatly diminished in importance. It is maintained then

that for 'neo-conservative', free market principles and the political conditionalities being insisted upon by international financial institutions - like the IMF and World Bank - and western governments to survive and prosper, stable, predictable and legitimate institutional and constitutional forms are necessary. Required also is constitutionalism, which means that governments and decision makers in those governments must function in terms of a clearly defined set of rules. Market forces cannot function adequately in an environment dominated by the whims of an all-powerful authoritarian or personal ruler.

Technical, administrative and managerial requirements for the promotion of free market principles and good governance are some of the conditionalities of the IMF and World Bank structural adjustment programmes being insisted upon and adopted in varying degrees by many African countries. Western governments have been stressed democracy, multi-partyism, free and fair elections, a free press and an independent judiciary (Leftwich 1996:15-16). In view of their poor economic growth rates, African countries have little choice but to accept the conditionalities being imposed by these institutions and governments. Of the three case studies in this thesis, Zimbabwe is the only country with an IMF/World Bank sponsored structural adjustment programme in place. Both the technical, administrative, managerial and political conditionalities must, in turn, result in the reassessment of constitutional forms so that they can be successfully implemented. Zimbabwe could be affected by this relationship.

Besides the role of the international financial institutions and western governments referred to above, the dynamics of globalisation, in which individual states become increasingly subject to global forces, are pushing African governments into a more subordinate relationship to market forces

(Falk 1996). This process of globalisation must, in turn, result in a reassessment of institutions and constitutions to ensure that they effectively support the functioning of market forces.

As a necessary corollary to the accommodation of market forces and the promotion of values, such as accountability and democracy, the state requires institutions and constitutional forms which are responsive, predictable and which ensure minimal degrees of order and stability. For free market forces to survive and promote economic development, it is argued (Leftwich 1996), democracy is necessary. To implement real democratic rule in place of authoritarian rule, which is the norm in many African countries, a fundamental restructuring of institutions and constitutions would, however, need to be undertaken. The political forces in the African state therefore need to be harnessed to devise legitimate and functional institutions and constitutional forms so as to accommodate democratic rule.

No substantial restructuring of the African state has taken place in the post-independence period; the exception being South Africa. Constitutional conferences which have been held, particularly in West African states, have come the closest to a fundamental restructuring of governments and institutions, but nothing has occurred on the scale of the South African constitution-drafting process which took place between 1990 and 1996. Unitary or federal constitutional forms and their varying degrees of centralisation or decentralisation have not been revisited and reconsidered to date in any great depth. As argued above, the literature points in this direction, suggesting that this is a problem area which needs to be addressed by Africans, international institutions and foreign governments. The question of decentralisation has been revisited and various practical attempts have been

made to decentralise, but with varying degrees of success and enthusiasm.

Constitutions drafted in a different 'climate of opinion' are unlikely to be suited to the 'neo-conservative' or 'neo-liberal' era in which global and local market forces dominate. Constitutions drafted at the turn of the twentieth century, in a different international political and economic climate will have to take into account prevailing notions like good governance, accountability, decentralisation and democracy.

The process of constitution drafting is being given limited recognition as is mentioned above. The problem of the constitutional order in the African state, which in most cases happens to have taken a centralised unitary form is being given limited recognition and could filter through and promote the constitution-drafting process on the ground.

Many of the issues being faced by African countries seem to suggest a new recognition of the importance of the role of institutions and constitutions in the performance of political systems. This could result in a revival of interest in the issue amongst political scientists and others in related disciplines. Allied to the new interest in institutions and constitutions (which was advocated by Rivkin (1968) referred to in chapter 4 above) an issue for consideration might be, what is the best constitutional design and process for drafting constitutions for specific African countries.

In chapter 3 it was mentioned that the centralised unitary state had evolved over a long period of time. To reverse the process will take time. That institutions are the 'carriers of history', is a fact that is difficult if not impossible to ignore. If South Africa's 1996 federal, partly decentralised,

constitution proves workable, this could provide a further incentive for the reassessment and redesigning of centralised unitary constitutional forms in other African countries and act as a benchmark in the process. The South African example could have a demonstration effect, taking the debate on governmental organisation and institutional design one step further, to a reassessment of centralised unitary constitutional forms in a number of African countries. The basic unitary constitutional forms in the countries of Botswana, Zimbabwe and Namibia probably serve the needs of those countries, whereas a federal constitutional form might better suit a large country like Zaïre (Democratic Republic of Congo) which, at the time of writing, is undergoing a regime change. The search for appropriate political institutions and constitutional forms for the African state is far from complete on the eve of the twenty-first century.

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